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Ethics Commission

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
JANUARY 10, 2005, 5:30 P.M.**

DOCUMENTS DEPT.

JAN - 5 2005

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**and AGENDA
Room 408 City Hall**

1 Dr. Carlton B. Goodlett Place, San Francisco

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Approval of the minutes of the regular meeting of December 13, 2004. (Discussion and possible action.)
- IV. Executive Director's report.
- V. Consideration of a Draft Permit Processing Code of Conduct required under S.F. Campaign and Governmental Conduct Code section 3.400(c). The draft Code contains ethical guidelines for permit applicants, permit consultants, and officers and employees of the Departments of Building Inspection, Planning, and Public Works. The draft is available from the Commission's office and on its website at sf.gov.org/ethics. (Discussion and possible action.)
- VI. Report on Major Donor Canvass. In November 2004, staff completed a canvass for delinquent major donor filers and sent out 163 notices to identified major donors. Subsequently, the Commission received several letters expressing concern that the notices were sent out in error, that they arrived years after the activity, and that they demanded action within 10 days. Staff will present a report on developments in this area. (Discussion and possible action.)
- VII. Discussion and clarification of the "neutrality" requirement for Ethics Commission members and employees in section I(C) of the Ethics Commission's Statement of Incompatible Activities. Section I(C) states: "Members and employees of the Ethics Commission may not engage in any outside activity that would cause a reasonable person to call into question the neutrality and objectivity of the Ethics Commission. (Discussion and possible action.)
- VIII. Review of the process for Commission consideration of advice letters, both formal and informal. The Commission has requested that it review advice letters, but has not made clear what procedures should be followed and whether it wishes to review both informal and formal advice letters before they are issued. Staff will present a recommended procedure. (Discussion and possible action.)

IX. Commissioner questions and proposed future agenda items.

- a) **Inquiries to the Executive Director.** Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.
- b) **Items for future meetings.** Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion and possible action.)

X. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Adjournment.

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Ethics Commission

January 10, 2005

(Approved 02/14/05)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

January 10, 2005

DOCUMENTS DEPT.

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I. Call to order and roll call.

Chairperson Michael Garcia called the meeting to order at 5:34 p.m.

COMMISSION MEMBERS PRESENT: Michael Garcia, Chairperson; Michele Anglade, Vice-Chairperson; Joe Lynn, Commissioner; Emi Gusukuma, Commissioner; and Waukeen McCoy, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Amy Lee, Department of Building Inspection; Tom Hui, Department of Building Inspection; Leo McFadden, Department of Building Inspection; Steve Hajnal, Department of Building Inspection; Ahmad Larizadeh; David Pilpel; James Sutton, Sutton Law Firm; Alexis Bronson; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Executive Director's Report for the Meeting of January 10, 2005

Draft Minutes of the Regular Meeting of December 13, 2004

Memo from Executive Director re: Permit Processing Code of Conduct, January 5, 2005

Memo from Executive Director re: Major Donor Canvass, January 6, 2005

Ethics Commission Statement of Incompatible Activities

San Francisco Charter Sections 15.100-15.105

Informal Advice Letter from Executive Director to James Sutton, January 4, 2005;
Advice Request from James Sutton to Executive Director, November 29, 2004

Materials distributed at the meeting:

5-Month Goals Target, Ethics Commission

E-mails re: Permit Processing Code of Conduct

Memo from Deputy City Attorney Claire Sylvia re: Restrictions on Activities of Ethics Commission Members and Employees

Interested Persons Mailing List Sign-Up

Memo from Executive Director re: Supervisor Sophie Maxwells's Electioneering Disclosure Legislation

Memo from Fair Political Practices Commission to Executive Director re: Section 1.106 of the San Francisco Campaign and Governmental Conduct Code, January 5, 2005

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

No public comment.

III. Approval of the minutes of the regular meeting of December 13, 2004.

Commissioner Lynn noted that the minutes did not reflect his opposition to portions of the draft advice letter to Supervisor Ross Mirkarimi. He proposed that the first paragraph of page 11 be amended as follows:

Although there was no consensus regarding the substance of the advice letter, Commissioner Gusukuma raised the point that a vote on the letter was not necessary, reflecting the general consensus of the Commission.

Motion 05-01-10-1 (Lynn/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission amend the minutes of the regular meeting December 13, 2004, with the proposed change.

Commissioner Gusukuma proposed the following additional language to Section VI:

Commissioner Gusukuma indicated that the Ethics Commission should not be in the business of collecting delinquent debt and expressed the view that there is certainly a reason why the twenty-five percent fee is charged by BDR. Namely, it obviates the need for the Ethics Commission to do the work to collect upon that debt.

Motion 05-01-10-2 (Gusukuma/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission amend the minutes of the regular meeting December 13, 2004, with the proposed change.

Commissioner Lynn noted that Items VII and VIII were listed in reverse order.

Chairperson Garcia inquired about Section IV and asked Commissioner Lynn how he knew that staff had sent out over 100 letters regarding major donor reports. Commissioner Lynn responded that he obtained this information from the Executive Director's Report. Chairperson Garcia requested that staff provide a copy of the Executive Director's Report for the meeting of December 13, 2004 at the next Commission meeting.

Chairperson Garcia inquired if Commissioner Lynn had indicated that he represented the Ethics Commission during his meeting with the University of San Francisco. Commissioner Lynn responded in the negative.

Public Comment:

David Pilpel noted that under the "Materials Distributed in Advance of the Meeting", the list includes "Draft Minutes for the Regular Meeting of November 8, 2004" and that Section III refers to the "Special Meeting of November 8, 20004." Chairperson Garcia stated that staff would amend the minutes to reflect that the meeting was a regular meeting.

Mr. Pilpel noted that the draft minutes were dated December 30 and that under the Sunshine Ordinance, minutes from public meetings are required to be available to the public ten business days after the meeting. Director John St. Croix responded that the date listed on the draft minutes reflected the latest version of the document.

Deputy Director Mabel Ng that for Section V, the last sentence in the paragraph preceding the second public comment section be amended as follows:

However, if negotiations terminate, the contractor can contribute to a City elective officer or candidate for such office. ~~If or if~~ the parties enter into a contract, then three months thereafter, the contractor can contribute to a City elective officer or candidate for such office.

Motion 05-01-10-3 (Gusukuma/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission amend the minutes of the regular meeting December 13, 2004, with the proposed change.

Motion 05-01-10-4 (Lynn/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission accept the minutes of the regular meeting December 13, 2004, with the amendments.

Chairperson Garcia congratulated Deputy City Attorney Chad Jacobs and his wife on their newborn daughter, Isabella Jennifer Jacobs, born on December 30, 2004.

IV. Executive Director's Report

Director St. Croix noted that the five-month goals target had been revised and that copies were available. He then noted that copies of Supervisor Maxwell's legislation regarding disclosure of political mailings were also available and that this legislation would be on the February agenda. Lastly, he noted that there were copies of a letter

from the California Fair Political Practices Commission regarding ranked-choice voting.

Mr. St. Croix reported that the Commission's budget submission for the 2005-2006 is due at the end of February, and staff has been meeting with the Mayor's budget office. He introduced Carmen Chu and Dawn Kamalanathan from the Mayor's budget office. Ms. Chu is the Commission's new budget liaison.

Commissioner Lynn inquired if Mr. St. Croix anticipated that the estimated revenues would change for the next fiscal year. Mr. St. Croix responded in the negative and noted that the Commission was looking at a shortfall from last year's estimate. He mentioned that the inclusion or exclusion of the large settlement [from the PG&E case] was a factor, because that was a one-time revenue source. Mr. St. Croix stated that a backlog may also impact the revenue projections. Overall, he stated that he hoped the revenue estimate would increase, but does not expect a significant amount.

Commissioner Lynn inquired whether revenues would be raised if the Commission increased the fines collection unit. Mr. St. Croix expressed concern that any increase in revenues would be offset by cuts in general fund support, and adding additional methods of collecting fines might create more work but not result in increased staffing.

Commissioner Lynn stated that he agreed with the Executive Director's Report with regards to the Commission staff not having enough resources to complete all of its mandates. He noted that the Commission has taken over the duty of filing officer for county central committee candidates, which used to be the duty of the Department of Elections, and the Commission did not receive any additional budget for this mandate. In the last budget, the Commission lost \$15,000 from its DTIS budget. In addition, the Commission has taken on the mandate of compiling, reviewing and approving Statement of Incompatible Activities for all City departments and commissions.

Ms. Chu noted that she was excited to work with the Commission on its upcoming budget and that her office was dedicated to working through the tough budget situation with the Commission. Mr. St. Croix stated that the Mayor's budget office and the Controller's Office have been very professional and helpful with regards to helping the Commission prepare its budget for the forthcoming fiscal year.

Commissioner Gusukuma inquired as to the status of the supplemental request. Ms. Chu responded that the Mayor's budget office has been engaged in active discussions regarding the supplemental request, including discussions with Ben Rosenfield, the Mayor's budget director. She stated that she had met with Commission staff and the Board of Supervisors and anticipated that a resolution would be reached within the next week. Chairperson Garcia stated that the issue was a question of quantum and Ms. Chu concurred.

Mr. St. Croix stated the campaign consultant re-registration deadline was January 1, 2005 and approximately two-thirds of previously registered consultants have not re-registered. Legal Analyst Richard Mo explained that because the November 2004 election had occurred, many campaign consultants elected to terminate their campaign consultant registration, and these consultants may re-register at a later time during the year if they obtain additional clients.

Commissioner Lynn inquired how the instant run-off voting would affect the timing of future elections. Specifically, he inquired if the election would be in March 2006 or November 2006. Director St. Croix responded that he would be meeting with the

Director of Elections and that he would bring up this issue during that time.

Mr. St. Croix stated that the Commission has scheduled a briefing on the Statements of Economic Interest for the end of February. He then stated that the Civil Service Commission was still in the process of reviewing the Statements of Incompatible Activities, and he anticipated that the new templates would be complete and sent back to all the agencies in approximately three weeks. He noted that with regards to the disbursement of funds to public finance candidates, because some of the last-minute requests were not authorized, the final figure changed slightly.

Commissioner Lynn inquired about the forthcoming staff report to the Mayor and Board of Supervisors regarding the 2004 public financing program. First, he inquired as to the cost to the Commission related to pursuing the supplemental budget. Second, he inquired if candidates were discouraged from applying for the public financing program because of the August 2004 pro-ration. Mr. St. Croix responded that the Commission was in the process of collecting surveys sent to all candidates and that the Commission would invite candidates to the February meeting for purposes of obtaining feedback concerning the public financing program.

Commissioner Lynn stated that disagreed with the advice letter to Jim Sutton regarding the application of San Francisco Campaign and Government Conduct Code Section 1.135 to major donors. He stated that in the past, the Commission has educated the public and the press that those major donor reports would be on file with the Commission, and therefore it was incumbent upon the Commission to issue a press release notifying the public of this change in the Commission's policy. He stated that the effect of this change was to exempt major donors from filing requirements which they previously had.

Commissioner Lynn stated that the Commission has not given a course regarding the lobbyist ordinance; the law requires that such courses be given every quarter and the Commission has not given this course in a year and half. He also stated that the Commission is behind in its investigations. Lastly, he stated that the Commission devoted staff resources to the Sutton advice letter and that he did not believe that this was an appropriate use of staff time. Mr. St. Croix responded that the last two scheduled lobbyist workshops were canceled due to lack of interest and that one would be offered during the first quarter of this year.

Commissioner Lynn stated that he still has not seen any action taken with regards to the streamlined enforcement program, and he recommended that the Executive Director review it to see what can be done to actually create a streamlined enforcement program. He then stated that the Commission still has not sent out specific written notices or any delinquency notices from a year ago.

Commissioner Lynn stated that with regards to the revamping of the Commission website, he hoped that it would kept in such a condition that it is available to the disabled community. Commissioner Anglade inquired as to the particular segment of the disabled community and Commissioner Lynn responded that he was referencing the blind community.

Public Comment:

Mr. Pilpel stated that with regards to Commissioner Lynn's concerns about the timing of the Public Defender and Assessor/Recorder election, the question for the City Attorney is whether an additional Charter amendment for this November election would be required in order to formally move the election date. He stated that the primary election in 2006 was moved from March to June. He stated that the budget proposals for the next meeting should include both a continuation budget and a

budget that would include funding for additional staffing. Mr. Pilpel noted that under section three of the Executive Director's Report, the next citywide election in November 2005 is for City Attorney and Treasurer.

Mr. Pilpel suggested that with regard to the campaign finance audit program, the Commission should note that due to backlog in audits, no additional committees were selected in 2003 or 2004, and that the audits in progress are for 2001 and 2002. He stated that he hoped that at some point the Commission would begin selecting committees for 2003 and 2004. Director St. Croix responded that all of the campaigns that participated in the public financing program will be audited, and the 5-month goals list indicated that the Commission would begin selecting 2003 and 2004 committees for random audits beginning in March.

1. Consideration of a Draft Permit Processing Code of Conduct required under S.F. Campaign and Governmental Conduct Code section 3.400(c). The draft Code contains ethical guidelines for permit applicants, permit consultants, and officers and employees of the Departments of Building Inspection, Planning, and Public Works.

Deputy Director Mabel Ng stated that the January 5, 2005 memo explained the new law and what the Ethics Commission was required to do under this new law. The new law, Section 3.400 of the San Francisco Campaign and Governmental Conduct Code, contains two provisions which specifically deal with activities at the Department of Building Inspection ("DBI"), the Department of Planning and the Department of Public Works.

Ms. Ng explained that the first part of section 3.400 requires all officers and employees of the three departments to treat all permit applicants the same regardless of the relationship of the applicant and/or the applicant's representatives to any officer or employee of the City and regardless of whether the applicant hires a permit consultant. Intentional preferential treatment of any permit applicant or representative may subject an officer or employee of the departments to disciplinary action for official misconduct.

Ms. Ng stated that the second part of section 3.400 requires the officers and employees of the departments to review, consider and process all applications, revisions, corrections and other permit-related material in the order in which that type of material is received unless there is a written finding of public policy basis for not doing so. Absent such a finding, any officer or employee who intentionally violates this provision is subject to disciplinary action for official misconduct.

Ms. Ng stated that the third part of section 3.400 requires that the Ethics Commission adopt a code of conduct for permit processing "containing ethical guidelines for permit applicants, permit consultants, and officers and employees" of the three departments. The code must be adopted no later than 60 days after the effective date of the provisions of section 3.400, posted in a conspicuous place in each of the

three departments, and distributed to each officer who makes or participate in making decisions related to permit applications. Section 3.400 took effect on December 15, 2004. The 60-day time period expires on February 13, 2005 and the next Commission meeting will take place on February 14, 2005, the day after the deadline.

Ms. Ng recommended that if the Commission did not adopt a code of conduct at tonight's meeting, the Commission could delegate to the Chair or the Executive Director the authority to work out any further revisions to the proposed code. The Commission held an interested persons meeting on November 19, 2004 and 17 people attended, including members of the public and representatives from the various departments. The January 5, 2005 memo contains a brief summary of the comments received at the interested persons meeting.

Ms. Ng explained that in drafting the memo, staff reviewed materials from various organizations, including codes from the American Institute of Certified Planners and the American Society for Public Administration, a draft code from the San Francisco Building Inspectors Association, the Code of Ethics of the Council of American Building Officials and documents from the Institute of Local Self Government. Based on its review of these documents, staff found that the following principles were important in the drafting of a code of conduct: 1) the code would serve as a framework for the day-to-day activities of the officers and employees of the departments; 2) ethical values identified as core values to guide conduct included honesty, fairness, respect, compassion and responsibility; 3) a code would serve as a pledge to uphold a standard of integrity and competence that is beyond that required by law. Ms. Ng noted that section 3.400 does not give the Commission authority to enforce the code.

Commissioner McCoy inquired why the draft code did not provide a definition for "preferential treatment." Ms. Ng responded that the section 3.400(c) requires the Ethics Commission to adopt a code of conduct and nothing in the section deals with preferential treatment. However, section 3.400(a) contains language that deals with preferential treatment and the Commission could adopt regulations clarifying what constitutes preferential treatment. Sections 3.400(a)(b) can be enforced, unlike section 3.400(c).

Chairperson Garcia suggested that the Commission take into consideration public comment prior to making a decision regarding the proposed draft code.

Public Comment:

Leo McFadden, president of the Building Inspectors Association ("BIA"), stated that no one ever asked the BIA for their draft code of ethics and that the BIA members never had any input into the draft code. Mr. McFadden stated that the requirement that permit applications be processed in the order in which they are received does not

take into consideration emergency situations. He also noted that DBI currently lacks a permit tracking system and that the proposed code did not distinguish between permits which are readily approvable and those which are not. He stated that the BIA supported a code of conduct but wanted to avoid a code which contained pitfalls that could result in employees being disciplined for doing their jobs.

Chairperson Garcia noted that section 3.400(b) allows for an exception to processing applications in sequential order if there exists a public policy basis for doing so. Mr. McFadden inquired if the code of conduct was subject to the meet and confer process. Ms. Ng explained that because the code was not enforceable, it was not subject to the meet and confer process. Chairperson Garcia noted that the draft code was a living document.

Commissioner Gusukuma inquired if the BIA was invited to the November 19, 2004 interested persons meeting. Mr. McFadden responded in the affirmative.

Amy Lee, Assistant Director of DBI, expressed concern that the proposed code of conduct's requirement that permit applications be processed on a first-come, first-serve basis did not take into consideration many factors which impact the permit application review process. She also noted that the proposed code reference "building codes" but not "planning" or "public works" codes.

Tom Hui, Acting Deputy Director of Permit Services for DBI, stated that because all permits are not the same, it was impractical to impose a first-come, first-served requirement.

Steve Hajnal, vice-president of BIA, stated that his only objection to the proposed code was that BIA was unaware that their draft code of conduct was going to be included in the proposed code. He stated that an unenforceable code of conduct was impractical because it had no regulatory power.

Ahmad Larizadeh, permit expeditor, stated that the proposed code was impractical.

After discussion concerning whether the draft code of conduct was too vague, Executive Director St. Croix proposed the following language:

Preamble

The people of San Francisco are entitled to fair and equitable processes for the review and approval of permit applications by City departments. To this end and pursuant to section 3.400(c) of the San Francisco Campaign and Governmental Conduct Code, the Ethics Commission adopts this Permit Processing Code of Conduct to guide the Department of Building Inspection, the Planning Department and the Department of Public Works, and members of the public who use their services.

For the Staff

As an employee or officer working on matters related to permits issued by the Department of Building Inspection, the Planning Department or the Department of Public Works, I will be honest in my dealings with permit applicants, permit consultants, members of the public and my colleagues. I will enforce compliance with City building, planning and public works codes and requirements in a consistent manner.

For the Public

I will be sensitive to the fact that officers and employees of the City must adhere to laws and rules that govern their conduct and I will respect their procedures. I will provide full, clear and accurate information to officers and employees of the City.

Motion 05-01-10-5 (Anglade/McCoy): Moved, seconded, and unanimously passed (5-0): that the Commission adopt the draft permit processing code of conduct, with the proposed amendments, as above.

Commissioner Gusukuma thanked the DBI employees for taking the time to come to the meeting.

The Commission went into recess at 7:30 p.m.

At 7:45 p.m., the Commission reconvened its meeting.

1. **Report on Major Donor Canvass.** In November 2004, staff completed a canvass for delinquent major donor filers and sent out 163 notices to identified major donors. Subsequently, the Commission received several letters expressing concern that the notices were sent out in error, that they arrived years after the activity, and that they demanded action within 10 days.

Executive Director St. Croix stated that the major donor canvass was one the areas in which the Commission had a backlog. He asked Deputy City Attorney Claire Sylvia to define who qualifies as a major donor. Ms. Sylvia explained that a major donor is an individual or a business entity that has contributed \$10,000 or more in a calendar year. Mr. St. Croix stated that a staff member identified 163 entities or individuals as being non-filers. However, this process was flawed because of two reasons. First, the letters sent by staff contained language which contained strong language regarding compliance penalties. Out of the 163 identified non-filers, 34 of them were actually not required to file with the Commission. Because the letter contained such strong language, many people took exception to being treated as though they had violated the law, when in fact they had committed no wrongdoing.

Second, there was a staff misunderstanding that major donors who were state filers would have been identified on the Secretary of State's website. However, there are certain types of major donor filings that are paper-only and thus are not listed on the State's website. Staff erroneously believed that these filings would all be listed on the State's website.

In order to rectify this error, Mr. St. Croix stated that he has since sent correction letters to these committees and/or their representatives. He has also contacted the Fair Political Practices Commission ("FPPC") and received their materials concerning how they handle non-filer situations. The FPPC letters are more informative, less accusatory and contain specific information concerning the donation(s) that generated the letter, thereby making it easier for the individuals receiving the letters to identify the exact source of the problem.

Mr. St. Croix stated that it was not staff's intention to treat non-filers in anything less than a professional manner. He stated that he took responsibility for the erroneous letters and ensured that in the future, staff would conduct these types of activities in a more careful manner.

Commissioner Lynn stated that when he was a staff member, he never suggested that staff execute this canvass because it was such a huge project, and he commended the Executive Director for the time and attention spent in resolving these errors.

Chairperson Garcia inquired if staff would be reviewing the 72 non-filers that have not responded to staff correspondence. Mr. St. Croix answered in the affirmative.

Public Comment:

Jim Sutton, attorney with the Sutton Law Firm, stated that he had worked with Executive Director St. Croix and Commission staff on several of the letters to alleged major donors, and he thanked Mr. St. Croix for his responsiveness to several of the concerns that were raised by several of Mr. Sutton's clients. Mr. Sutton stated that there were some additional policy considerations that he wanted to address, as follows:

First, it was not appropriate for the Commission to make the non-filing of major donor reports such a high priority for its staff. Major donors are distinctly different from anyone else who files campaign reports, as they only have to file if their contributions in a calendar year reach a certain level. Many individual and entity major donors are unaware of their filing obligations.

Second, the Commission was only dealing with individuals and entities that made all of their contributions to San Francisco candidates, ballot measures, and political action committees. Because the City has such a good online filing system, all of this information is available online. Commission staff is asking major donors to file paper copies of a report, yet no one will ever look at the paper copies of the report because all of this information is available online.

Third, it was inappropriate for Commission staff to go back so far in time. Many of Mr. Sutton's clients have received letters regarding contributions that they made in 2000. The people who authorized those contributions are gone and the files, if they even exist, are not readily accessible. In contrast, the FPCC's expedited enforcement program only goes back one to two years because of a laches and estoppel concept.

Fourth, the liability penalties for people who responded to the letters should be reduced. Penalties for non-filers dating back to 2000 are in the range of \$14,500 and these penalties do not serve a purpose because the information has been available electronically for the entire time.

Commissioner Anglade asked Mr. Sutton for clarification regarding his fourth point. Specifically, she asked if a copy of the same document had to be filed online or if the

information was available on a different document and accessible. Mr. Sutton responded that a recipient committee which receives the donation is required to file online under San Francisco law.

Commissioner Lynn stated that the Form 461, the major donor report, also lists the phone number, which is not listed on the recipient committee filings, and that has had historical importance. He mentioned that in the 1999 mayoral race, a donor who made a \$95,000 contribution listed a vacant lot as his address, and consequently members of the media were unable to locate the donor. If that donor had filed a Form 461, he would have had to list his phone number on that form and a reporter could have called him to ascertain his identity. He stated that Mr. Sutton was incorrect in his assertion that the information listed in the Form 460 was the same as that listed in the Form 461.

Mr. Sutton responded that anyone who lists a vacant lot as his or her address was probably not going to give an accurate phone number. Commissioner Anglade stated that Mr. Sutton's statement was responsive to Commissioner Lynn's point.

Mr. Sutton stated that the FPPC has a fixed formula for determining late filing penalties. The Commission staff, however, in response to requests from his clients for penalty reduction requests, has informed these non-filers that they will consider reductions, but failed to give any guidelines regarding the specific amounts. He suggested that the Commission adopt standards similar to those of the FPPC.

Commissioner Lynn asked Mr. Sutton if the committees that received the donations are required to notify the donors of their filing obligations. Mr. Sutton responded that committees are only required to notify donors that make contributions of \$5,000 or more. He also noted that oftentimes committees do not comply with this requirement. Lastly, he stated that oftentimes the committee sends the letter to the address listed on the contribution check, so the letter never reaches the appropriate person.

Commissioner Lynn stated that with respect to committees that have received contributions of \$5,000 and failed to notify the donors of their filing requirements, staff may want to consider enforcement action against these committees. He mentioned the following hypothetical: What if he was a major donor and made a \$10,000 donation to one committee and that committee fails to notify him of his filing obligation. In turn, he fails to file a major donor report and incurs a \$10,000 fine. Would he then have a cause of action against the committee for failing to notify him of his filing obligations? Mr. Sutton responded that the FPPC has never taken that view. Instead, the FPPC's position is that when a person claims that he or she never received a filing obligation notice from the recipient committee, the FPPC will take that into account when considering a waiver request.

Commissioner Anglade inquired if this project was done upon the Executive Director's direction. Mr. St. Croix responded that in general, yes. He noted that staff was going

back four years because that is the time limit allowed by the statute of limitations and that once staff began tackling the backlog, it made more sense to canvass the entire four-year period for purposes of staff efficiency.

Commissioner Gusukuma inquired if the Executive Director would be reporting back to the Commission regarding the waiver and penalty formula issue. Commissioner Lynn stated that the Commission should consider requiring committees to report the dates on which expenditures are made or approved.

Public Comment:

Mr. Pilpel stated that if the filing requirement is mandated by the law, the Commission should enforce it.

Commissioner Lynn stated that an analogous situation is the requirement that donors report the employer and occupation of individual donors. Four years ago, the percentage of filers meeting this requirement was about fifty percent, and the Commission passed a law stipulating that failure to report this information would result in the forfeiture of a portion of the contribution. After the Commission began enforcing this law, the compliance percentage went up to ninety-nine percent. He expects that the percentage of major donors who fail to file reports will eventually decrease.

Mr. St. Croix noted that with regards to Commissioner Gusukuma's request that staff report back to the Commission, he would put it on the March agenda.

- Discussion and clarification of the "neutrality" requirement for Ethics Commission members and employees in section I(C) of the Ethics Commission's Statement of Incompatible Activities. Section I(C) states: "Members and employees of the Ethics Commission may not engage in any outside activity that would cause a reasonable person to call into question the neutrality and objectivity of the Ethics Commission."

Chairperson Garcia requested that the Deputy City Attorney address this item. Deputy City Attorney Claire Sylvia explained that this was an issue about which Commissioner Gusukuma had previously raised questions. When the Ethics Commission adopted its proposed Statement of Incompatible Activities ("SIA"), one of the provisions stipulated that members and employees of the Commission would not do anything that would call into question the neutrality of the Commission. Ms. Sylvia stated that her January 7, 2005 memo outlined the rationale and history of this provision of the SIA.

Commissioner McCoy stated that he originally proposed removing the word "political" from the SIA because he did not see the Commission as being political nor did he want the Commission to be viewed as such.

Commissioner Gusukuma stated, as an example, that attendance at the inauguration for members of the San Francisco School Board would not, in her opinion, constitute a proscribed activity. However, she could also anticipate arguments to the contrary. She inquired if attendance at various events, such as the State of the City address or a seminar sponsored by the National Women's Committee where elected officials were also in attendance, would cause a reasonable person to call into question the neutrality and objectivity of the Commission member or employee. She stated that under the current language of section I(C) of the SIA, it was open to interpretation because it was too broad.

Deputy Director Ng explained that the Commission originally tentatively passed a draft SIA, but the intent was for the Commission to revisit and review its SIA, as well the SIAs submitted by all the other City departments. Ms. Sylvia noted that every department had to submit a proposed SIA by August 1, 2004 and the Commission adopted its own proposed SIA under the same timetable. The intent was that the Commission would revisit all the SIAs after staff and the Civil Service Commission complete their reviews.

Commissioner Anglade stated that section I(C) could be subject to conflicting interpretations.

Mr. St. Croix proposed the following language:

Members and employees of the Ethics Commission may not engage in any outside activity that would cause a reasonable person to call into question the neutrality and objectivity that the Ethics Commission uses in deliberations and decisions on issues and actions under its jurisdiction.

Commissioner McCoy stated that he would be amenable to the proposed language, but with regards to the examples cited by Commissioner Gusukuma, the language still was subject to conflicting interpretations.

Ms. Sylvia suggested that staff could include examples of allowable and proscribed activities as part of the regulation. Mr. St. Croix responded that staff would work on this.

Commissioner Gusukuma inquired about the issue of situations where Commission staff or employees have pre-existing personal friendships with politicians. Mr. St. Croix responded that similar to other ethics laws, such as one regulating gifts, there are certain exceptions to the prohibition, and personal friendships would be included among these exceptions.

Public Comment:

Mr. Pilpel suggested that the Commission consider additional carve-outs for non-political or non-endorsement activities of committees or entities that would otherwise be subject to Commission regulation.

- Review of the process for Commission consideration of advice letters, both formal and informal. The Commission has requested that it review advice letters, but has not made clear what procedures should be followed and whether it wishes to review both informal and formal advice letters before they are issued.

Chairperson Garcia explained that the issue before the Commission was not regarding the substance of advice letters, but rather the issue of staff policies regarding advice letters.

Commissioner Gusukuma inquired if the law required that the Commission answer a request for advice within a certain time frame. Ms. Sylvia responded that the Charter states that anyone can ask for advice and the Commission shall transmit its proposed opinion within twenty-one days to the City Attorney and the District Attorney, provided that the Commission could extend the time period for good cause.

Commissioner Gusukuma inquired if this applied to formal or informal advice letters. Ms. Sylvia responded that the Charter does not distinguish between informal and formal advice, as it only mentions written advice.

Commissioner Gusukuma asked if the Commission also forwards informal advice letters to the City Attorney for review. Ms. Sylvia responded in the negative and explained that the advice given under this Charter section provides immunity, effectively applying only to formal advice. The informal advice process is a mechanism that has been developed by staff. Commissioner Gusukuma inquired if there was a time frame for informal advice requests. Ms. Sylvia responded in the negative.

Commissioner Gusukuma stated that there were apparently three classes of advice: verbal informal; written informal; and written formal. She expressed concern over the distinction made in the advice letter which states that the Commission, when giving informal verbal advice, tends to give a more conservative answer, as opposed

to when the Commission gives informal written advice.

Commissioner Anglade asked what becomes of informal advice letters and if they are accessible to the public. Ms. Ng responded that all of the Commission's advice letters since 2001, both informal and formal, have been posted on its website, and the Commission also maintains a hardcopy file.

Commissioner McCoy asked if the reason the Commission issues informal written advice was for purposes of expediency. Ms. Ng responded that staff provides informal written advice when the requestor provides information concerning what they want to do, without providing specific facts. Hence, the informal written advice gives a general response to the inquiry. When staff issues oral advice, it usually takes place over the telephone, and staff always gives the most conservative advice in the interest of erring on the side of caution. Staff gives oral advice because requestors indicate that they have time constraints.

Commissioner Lynn stated that he was on the Commission staff from 1997 to 2003 and had a lot of institutional memory, particularly with regards to campaign finance issues. He inquired if it would be appropriate for him to contact the Executive Director with this knowledge. Specifically, he asked if he could be consulted with regards to requests for advice concerning campaign finance issues. Commissioner McCoy stated that Commissioner Lynn could write a memo regarding his campaign finance knowledge to the Executive Director, but that it would be inappropriate for a Commissioner to consult with staff on a specific advice letter request.

Commissioner Anglade stated that she agreed with Commissioner McCoy's response. Chairperson Garcia stated that the Commissioners did not need to see every single informal advice letter that staff sends out. Commissioner Lynn responded that although the Commission does not need to approve every single advice letter, it does need to be made aware of them.

Mr. St. Croix proposed that staff will write and send out informal advice letters and all of these letters will be provided for the Commissioners in their next packet. Formal advice letters will be drafted and sent to the Commissioners a certain amount of time before each meeting and if two Commissioners request the letter be calendared, it will be put on the agenda for Commission action. Otherwise, staff will send the letter to the requestor.

Public Comment:

Mr. Pilpel stated that he approved of the Commission's direction with regards to the

advice letter process.

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission. [This item was taken out of order to accommodate a member of the public.]

Alexis Bronson stated that he had filed a complaint with the Commission on January 21, 2004 regarding unlawful disclosure of confidential information by the Sheriff's Department. He stated that he had not heard anything from staff and that he was disappointed with staff's lack of response to his complaint. Mr. St. Croix stated that he would look into Mr. Bronson's complaint.

Public Comment:

Mr. Pilpel stated that Mr. St. Croix and Mr. Mo attended the December Sunshine Ordinance Task Force ("SOTF") meeting and testified regarding the Commission's complaint procedure. He noted that Mr. St. Croix and Mr. Mo were well received by members of the SOTF.

IX. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

Commissioner Anglade requested that staff report back on the major donor issue with regards to what information each form requires.

Commissioner Lynn requested that the Commission consider bringing more sunshine into the enforcement process. He also stated that the Commission needs to make a stronger argument regarding its budget proposal.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

None.

X. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting.

The Chairperson stated that the Commission had taken the following action: 1) adopted a code of conduct for permit processing; 2) heard from staff and members of the public regarding issues related to the major donor canvass; 3) addressed the Commission's SIA with regards to the issue of neutrality without taking any action; and 4) discussed and delineated the Commission's advice letter process.

Chairperson Garcia stated that this might be his last meeting and he thanked his fellow Commissioners and staff for having the opportunity to serve on the Commission. Commissioner Anglade thanked Chairperson Garcia for his services and contributions.

XII. Adjournment.

Motion 05-01-10-6 (Anglade/Gusukuma):Moved, seconded, and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 8:55 p.m.

Respectfully submitted,

Richard Mo

Legal Analyst/Investigator

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**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

February 14, 2005, 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

- 1105
- I. Call to order and roll call.
 - II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
 - III. Approval of the minutes of the regular meeting of January 10, 2004. (Discussion and possible action.)
 - IV. Public comment from candidates and committee representatives regarding the Public Finance Program during the November 2004 Election. All candidates and committee representatives who participated in this program have been invited to this meeting to express their opinions regarding the requirements and execution of the Public Finance Program for candidates for the S.F. Board of Supervisors. (Discussion item.)
 - V. Budget for Fiscal Year 2005-2006 – Discussion and possible action on proposed budget for the upcoming fiscal year. A copy of the proposed budget and staff memo will be available on the Commission website and office by close of business on Thursday, February 10. (Discussion and possible action.)
 - VI. Election of Officers – The Commission will choose a Chair and Vice-chair for the coming year. (Discussion and possible action.)
 - VII. Executive Director's report.
 - VIII. Legislation to regulate electioneering communications – The Board of Supervisors has forwarded proposed legislation amending the Campaign and Governmental Conduct Code to require that electioneering communications identify who paid for the communication; the legislation also requires reporting of spending on communications over \$1,000. (Discussion and possible action.)
 - IX. Six-month report on the Streamlined Enforcement Program. (Discussion item.)

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X. Commissioner questions and proposed future agenda items.

a) **Inquiries to the Executive Director.** Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) **Items for future meetings.** Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion and possible action.)

XI. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)

XII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XIII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Adele Destro by mail to Interim Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at solfa@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Destro or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317 and web site www.sfgov.org/ethics



Ethics Commission

February 14, 2005

(Approved as amended 03/14/05)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

February 14, 2005

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I. Call to order and roll call.

Acting Chairperson and Vice-Chairperson Michele Anglade called the meeting to order at 5:35 p.m.

COMMISSION MEMBERS PRESENT: Michele Anglade, Acting Chairperson; Waukeen McCoy, Commissioner; Emi Gusukuma, Commissioner; Joe Lynn, Commissioner; and Eileen Hansen, Commissioner

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator; Shaista Shaikh, Public Finance Administrator

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Michael Garcia; David Pilpel; Marc Salomon Solomon; Greg Asay, Legislative Aide to Supervisor Sophie Maxwell; Chuck Thomas; Phillip House; Kevin Heneghan, Sutton Law Firm; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Executive Director's Report for the Meeting of February 14, 2005

Draft Minutes of the Regular Meeting of January 10, 2005

San Francisco Ethics Commission's Budget and Policy, FY 05-06

Memo from Executive Director re: Electioneering Legislation, February 10, 2005

Memo from Executive Director re: 6-Month Report, Streamlined Enforcement Program, February 10, 2005

Materials distributed at the meeting:

Chart re: Ethics Commission Sufficiency Budget for FY 05-06

Acting Chairperson Anglade introduced and welcomed Board of Supervisors appointee Eileen Hansen as the newest member of the Commission.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Former Chairperson Michael Garcia congratulated Commissioner Hansen on her appointment to the Commission. Mr. Garcia stated that it was incumbent upon the Commission to better inform the public of the Commission's actions and decisions. He thanked the Commission staff and the City Attorney's Office for their work and contributions. Acting Chairperson Anglade thanked Mr. Garcia and said it was a pleasure serving with him.

Charles Marsteller suggested that Item VIII, legislation to regulate electioneering communications, be discussed at a separate interested persons meeting.

Philip House, former candidate for District 5 Supervisor, stated that he did not seek public financing because he wanted to use his own money to run his campaign.

Marc Solomon stated that the Commission was underfunded and suggested that the Commission ask for an increased budget for the upcoming fiscal year. He also suggested that the Commission hold two meetings per month.

III. Approval of the minutes of the regular meeting of January 10, 2005.

Commissioner Lynn suggested that Commissioner Hansen be recused from voting on this item because as of the January 10, 2005 meeting, she was not yet a Commissioner.

Motion 05-02-14-1 (Lynn/Gusukuma): Moved, seconded, and unanimously passed (4-0): that Commissioner Hansen be permitted to recuse herself from voting on this item.

Motion 05-02-14-2 (Lynn/Gusukuma): Moved, seconded, and unanimously passed (4-0): that the Commission adopt the draft minutes of the regular meeting January 10, 2005.

Public Comment:

There was no public comment.

IV. Public comment from candidates and committee representatives regarding the Public Finance Program during the November 2004 Election. All candidates and committee representatives who participated in this program have been invited to this meeting to express their opinions regarding the requirements and execution of the Public Finance Program for candidates for the S.F. Board of Supervisors.

Public Comment:

Greg Corrales, former candidate for District 7 Supervisor, stated that he did not apply for public financing because it would have been incongruent with his platform to protect taxpayers' money. He stated that public funding was excessive and that the Commission should reduce the maximum amount of funding available for candidates. He thanked Commission staff for doing an excellent job in running the public financing program and he stated that Commission staff were extremely patient and helpful.

~~Karl Carr~~ Kramer, campaign manager for former District 9 Supervisor candidate Renee Saucedo, thanked Commission staff for being friendly, professional and efficient. He stated that Ms. Saucedo was able to run for office because of three reasons: district elections; ranked-choice voting; and the public financing program. He suggested that the Commission change the ceiling on all individual cash contributions from \$99.99 to \$100.. He stated that in order to successfully compete against incumbent supervisors,

publicly-financed candidates need at least \$90,000 in funding. Commissioner Lynn asked Mr. Kramer when he received his first disbursement check. Mr. Kramer responded that he could not recall the exact date, but the turnaround time was quite short.

Chuck Thomas, volunteer campaign manager for four former candidates for various supervisory elections, commended Commission staff for their professional attitude. In particular, he thanked Public Finance Administrator Shaista Shaikh for her assistance and he stated that he could not have run the campaigns without Ms. Shaikh's efforts. He also thanked Deputy Director Mabel Ng for her assistance. He stated that \$83,000 seemed like the appropriate amount of money for publicly-financed candidates. He stated that it would have been helpful if applicants for public financing could receive their funds earlier, or at least receive some indication from Commission staff if they were going to be eligible for public financing, because many of his candidates' decisions hinged on whether they were ultimately going to qualify for public financing.

Marc Soloman stated it would be helpful for candidates if the availability of funding was made concrete earlier on in the process. He also suggested that the Commission receive Election Campaign Fund monies during this budget cycle and bank it.

David Pilpel suggested the following: 1) Commission staff to incorporate informal advice given in this election cycle into a guide for candidates for future supervisory elections; 2) standardization of all forms used for public financing applications; 3) require mass mailing disclosures to include two copies of the mailing and also require the treasurer to sign off on the disclosure; 4) Commission staff to develop a database to log and track mass mailing disclosures; 5) Commission staff to create an informational campaign guide for candidates.

Acting Chairperson ~~Commissioner~~ Anglade thanked Ms. Shaikh for all work on the public finance program.

Ms. Shaikh reported that she contacted all 23 publicly-financed candidates via U.S. mail and email and she also contacted the treasurers and campaign representatives for each participant. She briefly spoke about the survey results, which will be included in the forthcoming report on public financing. Commissioner Hansen thanked Ms. Shaikh for her work.

1. Budget for Fiscal Year 2005-2006

2. 1.0 FTE Campaign Finance Assistant;
3. 2.0 FTE Assistant Investigators;
4. 2.0 FTE Auditors;
5. 0.5 FTE IT Officer
6. Additional \$2,000 for an offsite computer backup system;
7. Additional \$3,000 for increased professional training funds for staff;
8. Additional \$10,000 for a reserve fund for litigation expenses; and
9. Additional \$2,000 for travel budget for expert witnesses.
10. Line item 081 increased by \$30,000 (restoration of DTIS funds for OLFs maintenance), for a total of \$74,224.
11. Line item 021 reduced by \$50,000 (elimination of switch to private vendor) and increased by \$17,000 (see Commissioner Lynn's amendments), for a total ~~reduction~~ of \$114,165.

Executive Director John St. Croix explained that the proposed budget included two main highlights: 1) it adds three full-time employees (FTEs) to Commission staff; and

2) it proposes possibly changing the current online filing system ("OLFS") to a private vendor. The three additional FTEs are comprised of a campaign finance assistant, an auditor and an assistant investigator. The proposed budget does not meet the Mayor's instructions, which calls for a \$90,000 cut, which means the elimination of one staff member. Mr. St. Croix explained that OLFS is too antiquated and requires too many ongoing fixes; the Commission received 31 complaints about OLFS between September and December of 2004. He added that full staffing at the Commission would include 17 staff members.

Public Comment:

Mr. Pilpel stated that with regards to the problems the current online filing system, there needs to be more consultation among DTIS, the Mayor's Office and the Commission. He also noted that with regards to an increased office space, the Controller's Office was looking at potential properties at 1 South Van Ness Avenue and the Civic Center for Citywide use.

Rod Loucks, Chief Technology Officer for the Department of Telecommunication and Information Services (DTIS), stated that he had never heard of any complaints regarding OLFS. He stated that he would like to work with Commission staff and resolve any problems that people have been experiencing with OLFS.

Mr. Marsteller stated that the Commission should consider how the budget will play to the Board of Supervisors. Specifically, he noted that the most visible mandates of the Commission were enforcement, auditing and the public financing program.

After discussion among the Commissioners regarding various aspects of the proposed budget, Commissioner Hansen proposed that the Commission include a total of 5.5 additional FTEs in its proposed FY 05-06 budget. Specifically, the additional 5.5 FTEs would be comprised of the following:

Commissioner Lynn proposed the following amendments to Commissioner Hansen's proposal:

Director St. Croix proposed the following amendments to Budget Form 3a:

Motion 05-02-14-3 (Hansen/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission adopt the proposed FY 05-06 budget, with the proposed amendments, as above.

The Commission went into recess at 8:10 p.m.

At 8:20 p.m., the Commission reconvened its meeting.

VIII. Legislation to regulate electioneering communications - The Board of Supervisors has forwarded proposed legislation amending the Campaign and Governmental Conduct Code to require that electioneering communications identify who paid for the communication; the legislation also requires reporting of spending on communications over \$1,000. [Note: This item was taken out of order as a courtesy to Supervisor Maxwell's office.]

Greg Asay, legislative assistant to Supervisor Sophie Maxwell, explained that the intent of this legislation was to close a loophole, remove secrecy and require full public disclosure of electioneering communications.

During discussion among the Commissioners regarding the proposed legislation, several questions were raised, including the following: 1) the definition of "electioneering communication"; 2) the communications/membership exception; and 3) contribution limits.

Public Comment:

Mr. Pilpel made the following suggestions: that 1) ~~that~~ the proposed legislation require two copies of the electioneering materials be filed with the Commission; 2) increase the fine amounts; 3) require recordings and transcriptions of spoken word electioneering materials; and 4) decrease the threshold of the electorate from 500 to 250 eligible voters.

Mr. Marsteller stated that the member communications exception was a contested issue in 2001 between the FPPC and Los Angeles. He suggested that the Commission research the issue of billboards and editorial disclaimers.

Kevin Heneghan, Sutton Law Firm, stated that Los Angeles requires disclosure of all member communications and cautioned that closing one loophole may lead to the creation of another.

Commissioner Gusukuma moved to adopt staff's recommendations but to include **"signs" "sign"** after the word "facsimile" on page four, line 11- , as well as on page **one of the legislative digest, also after the word "facsimile."** Commissioner McCoy seconded this motion.

After some discussion, Commissioner Lynn, seconded by Commissioner Hansen, then moved to table the matter until additional information was received.

Motion 05-02-14-4 (Lynn/Hansen): Moved, seconded, and failed by a vote of 2-3 (Commissioners Gusukuma, Anglade and McCoy opposing): that the Commission table consideration of the proposed legislation.

Commissioner Lynn then moved to amend Commissioner Gusukuma's motion by adding a \$500 contribution limit to the legislation. He then amended his motion to add that the Deputy City Attorney and Commission staff report back within a reasonable time on the issues raised tonight. Commissioner Gusukuma accepted the amendment.

Mr. Asay stated that Supervisor Maxwell's office would be glad to conduct more research on the issues raised by the Commission and that it would be okay if the Commission continued this matter for a month.

Motion 05-02-14-5 (Gusukuma/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission rescind consideration of Commissioner Gusukuma's motion.

Motion 05-02-14-6 (Gusukuma/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission table consideration of the proposed legislation.

1. Election of Officers

Commissioner McCoy nominated Acting Chairperson Commissioner Anglade for Chairperson. Commissioner Lynn nominated Commissioner Gusukuma for Chairperson.

Acting Chairperson ~~Commissioner~~ Anglade stated that she had served on the Commission for four years and was also the Vice-Chair for the past year. She stated that she valued the work of the Commission and her primary objective as Chairperson would be to facilitate discussion and reasoned conclusions among the Commissioners.

Commissioner Gusukuma inquired about the scope of duties and time commitment required of the Chairperson. Executive Director St. Croix responded that the time commitment was similar to that of a Commissioner and that the Chairperson had two main responsibilities - helping the Executive Director create meeting agendas and running Commission meetings. Deputy Executive Director Ng added that it would be important for the Chairperson to be well versed in the issues facing the Commission and that it is helpful if the Chairperson is available to attend some meetings at the Board of Supervisors to advocate on behalf of Commission staff.

Commissioner Gusukuma stated that the Commission needed to bring more transparency to the complaint process so that the public has more trust in the Commission's decisions. She stated that this would also bolster the Commission's budget requests. She stated that the Commission should revisit CFRO amendments and explore the possibility of obtaining independent funding for the Commission's budget.

Public Comment:

There was no public comment.

Motion 05-02-14-7 (McCoy): Moved but not passed (2-3; Commissioners McCoy and Anglade voting in favor of the motion); that Commissioner Anglade be elected Chairperson for the term beginning March 1, 2005.

Motion 05-02-14-8 (Lynn): Moved and passed (3-2; Commissioners Lynn, Gusukuma and Hansen voting in favor of the motion); that Commissioner Gusukuma be elected Chairperson for the term beginning March 1, 2005.

Acting Chairperson ~~Commissioner~~ Anglade nominated Commissioner McCoy for Vice Chairperson.

Public Comment:

There was no public comment.

Motion 05-02-14-9 (Anglade): Moved and unanimously passed (5-0): that Commissioner McCoy be elected Vice Chairperson for the term beginning March 1, 2005.

- **Executive Director's Report**

Executive Director St. Croix stated that Supervisor Ross Mirkarimi had requested a hearing regarding whether the Commission has sufficient funds to carry out its mandates. The date for the hearing has not yet been scheduled. Mr. St. Croix stated that the Commission has hired two temporary employees, one to help with audits and the other to help with investigations. He noted that the Commission recently received a \$20,000 fines collection settlement. Commission staff will hold an SEI workshop on February 16 and a lobbyist workshop on March 21. Mr. St. Croix noted that there are three City agencies that have not yet filed draft SIAs - the Assessor/Recorder, the Board of Appeals and the Relocation Appeals Board.

Commissioner Lynn suggested that with regards to the lobbyist workshop, staff instruct the public how to mine/interpret the data filed in the quarterly reports. He requested that staff provide copies of pending requests for advice letters to the Commissioners. Commissioner Lynn suggested that staff hold a public hearing before issuing an advice letter.

Public Comment:

Mr. Pilpel stated that he had not seen a copy of the Tony Hall advice letter in the 30-day file. Deputy Executive Director Ng responded that this particular advice letter was considered by and adopted by the Commission last August and that the advice letter was made available to the public.

IX. Six-month report on the Streamlined Enforcement Program.

Director St. Croix explained that because the streamlined enforcement program was still relatively new, staff needed more time to determine if the program was effective or needed changes. As such, he stated that staff would defer judgment on the effectiveness of the program until a later time.

Public Comment:

There was no public comment.

X. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

- Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

Public Comment:

Mr. Pilpel requested that the Executive Director provide an updated 5-month plan every month as an attachment to the Executive Director Report. He suggested that Commission staff consider at least one case in closed session per month, so that the Mayor and Board of Supervisors realize the volume of cases that falls upon Commission staff.

Commissioner Hansen stated that she was interested in exploring the complaint process: whether staff had adequate resources to carry out its mandate, the investigatory procedures, prioritization of cases and the overall complaint process.

XI. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting.

Executive Director St. Croix stated that the Commission had taken the following action: 1) received public comment from both participants and non-participants regarding the public financing program; 2) adopted a proposed budget for FY 2005-

2006 to submit to the Mayor, which will include a report of future year budget plans and long-term strategy; 3) considered and postponed electioneering legislation requiring disclosure of payments for electioneering materials and disclosure of sponsorship; 4) received a 6-month report on the Streamlined Enforcement Program; and 5) elected a new Chairperson and Vice-Chairperson.

XII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Mr. Marsteller congratulated the new officers on their election.

XIII. Adjournment

Motion 05-02-14-10 (McCoy/Gusukuma): Moved, seconded, and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 9:45 p.m.

Respectfully submitted,

Richard Mo

Legal Analyst/Investigator

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Ethics Commission



30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
March 14, 2005, 5:30 P.M.
and AGENDA**

**Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco**

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Approval of the minutes of the regular meeting of February 14, 2004. (Discussion and possible action.)
- IV. Legislation to regulate electioneering communications – The Board of Supervisors has forwarded proposed legislation amending the Campaign and Governmental Conduct Code to require that electioneering communications identify who paid for the communication; the legislation also requires reporting of spending on communications over \$1,000. (Discussion and possible action.)
- V. Sunshine Ordinance Task Force Resolution – The SOTF, at its monthly meeting in February, voted to adopt a resolution that the Ethics Commission violated the Sunshine Ordinance at its August 4, 2004 meeting and referred this resolution to the Board of Supervisors. (Discussion item.)
- VI. Possible delegation of authority to the Executive Director regarding waiver request – the Ethics Commission received a waiver request from former Supervisor Matt Gonzalez, who wishes to practice law that would necessitate interaction with the City Attorney's office and the District Attorney's office. Under the Commission's regulations, the waiver request was submitted too late to be considered at this meeting. However, the Commission may delegate authority to make this decision to the Executive Director. Otherwise, Mr. Gonzalez can request an expedited decision that would be heard and decided by the Executive Director, subject to subsequent overrule by the Commission. (Discussion and possible action.)
- VII. Follow-up discussion of Major Donor filings – discussion of procedure to follow FPPC guidelines for filing late-filing major donors and comparison of filings from major donors versus recipient committee filings (Forms 461 and 460, respectively). (Discussion item.)
- VIII. Executive Director's Report – an update of important Ethics Commission staff activities since the previous monthly Commission meeting, including budget update.



IX. Commissioner questions and proposed future agenda items.

a) **Inquiries to the Executive Director.** Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) **Items for future meetings.** Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

X. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Adjournment.

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Ethics Commission

March 14, 2005

(Approved 04/11/05)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

March 14, 2005

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I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 5:40 p.m.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Waukeen McCoy, Vice-Chairperson; Joe Lynn, Commissioner; Eileen Hansen, Commissioner; and Michele Anglade, Commissioner (arrived at 5:45 p.m.)

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: David Looman; Enrique Pearce; David Pilpel; Greg Asay, Legislative Aide to Supervisor Sophie Maxwell; Jim Sutton, Sutton Law Firm; Kevin Heneghan, Sutton Law Firm; Charlie Marsteller; Patrick Perez; Oliver Luby; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Executive Director's Report for the Meeting of March 14, 2005

Draft Minutes of the Regular Meeting of February 14, 2005

Ethics Commission On-Line Filing System Handbook, March 2005

5-Month Target Goals, Ethics Commission, 2005

Board of Supervisors Resolution re: Ethics Investigation Disclosure, March 5, 2005

Memo from Executive Director re: Electioneering Legislation, February 10, 2005

Draft Legislation re: Regulation of Electioneering Communications, March 14, 2005

Memo from Center for Governmental Studies re: Electioneering Legislation

Memo from Executive Director re: Sunshine Ordinance Task Force Complaint, January 7, 2005

Text of Sunshine Ordinance Task Force Adopted at February 22, 2005 Meeting

Statement of Joe Lynn re: Sunshine Ordinance Task Force Complaint

Minutes of the Special Meeting of August 4, 2004

Letter from Matt Gonzalez re: Post-Employment Restriction Waiver Request, March 9, 2005

Memo from Executive Director re: Penalty Schedule for Late Major Donor Filings, March 10, 2005

Fair Political Practices Commission Form 460

Fair Political Practices Commission Form 461

Budget Submission Deadlines

Materials distributed at the meeting:

Stipulation re: Ethics Complaint No. 49-021130

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

David Looman, Treasurer of the Bernal Heights Democratic Club, stated that he was concerned about the bureaucratic burdens placed on his committee, which he said paid fines equal to 1.5 years of its income, and is now being audited by the Commission.

Enrique Pearce stated that Macintosh users had experienced compatibility issues with the Commission's On Line Filing System.

III. Approval of the minutes of the regular meeting of February 14, 2005.

The Commission discussed the draft minutes and proposed spelling and/or grammatical changes. Commissioner Lynn stated that he did not understand the budget information in Section V, page 4, in particular, the \$114,165 figure. Executive Director John St. Croix stated that he would verify that information.

Motion 05-03-14-1 (McCoy/Anglade): Moved, seconded, and unanimously passed (5-0): that the Commission adopt the draft minutes of the regular meeting February 14, 2005, as amended, subject to the Executive Director verifying the budget information in Section V.

Public Comment:

There was no public comment.

IV. Legislation to regulate electioneering communications - The Board of Supervisors has forwarded proposed legislation amending the Campaign and Governmental Conduct Code to require that electioneering communications identify who paid for the communication; the legislation also requires reporting of spending on communications over \$1,000.

Executive Director St. Croix explained that the proposed draft legislation was based on input from the Commission as well as discussions with Supervisor Maxwell's office.

After discussion among the Commissioners regarding the definition of "member" and the possibility of adding a contribution limit, Vice Chairperson McCoy moved that the draft legislation be adopted. Commissioner Anglade seconded the motion.

Commissioner Hansen made the following friendly amendments: 1) replace "members" with "membership" (pg. 6:3); and 2) replace "may" with "shall" (pg. 6:2).

Commissioner Lynn, seconded by Commissioner Hansen, proposed adding a \$500 contribution limit to the legislation.

Public Comment:

Charlie Marsteller stated that the Commission needed hard data to develop a public record supporting a contribution limit. He also inquired if the Commission had the legal authority to regulate certain types of membership communications.

David Pilpel stated that a well-rounded public record would be needed in order to defend any constitutional challenges to a contribution limit.

Motion 05-03-14-2 (Lynn/Hansen): Moved, seconded, and not passed (2-3, Commissioners Gusukuma, McCoy and Anglade dissenting): that the Commission adopt the proposed legislation, with amendment of a \$500 contribution limit.

Motion 05-03-14-3 (Anglade/McCoy): Moved, seconded, and unanimously passed (5-0): that the Commission adopt the proposed legislation, as amended.

- Sunshine Ordinance Task Force Resolution - The SOTF, at its monthly meeting in February, voted to adopt a resolution that the Ethics Commission violated the Sunshine Ordinance at its August 4, 2004 meeting and referred this resolution to the Board of Supervisors.

Executive Director St. Croix stated that he appeared before the SOTF on February 22, 2005, during which time he defended the Commission. The SOTF disagreed with Mr. St. Croix and referred the complaint to the Board of Supervisors.

Deputy City Attorney Claire Sylvia explained that the Sunshine Ordinance does not provide the Board of Supervisors with any enforcement authority.

Commissioner Lynn stated that under the Charter, the Commission is mandated with specific obligations to protect open meeting laws and that if the Commission did something wrong, it should acknowledge it.

Commissioner Anglade thanked Executive Director St. Croix for his well-written response. She stated that if the Commission commits a wrongdoing, it should be held accountable. However, in this instance, it seemed like a case of ongoing sour grapes and the complaint was causing bad morale among Commission staff.

Commissioner Hansen stated that the Commission should be proactive.

Mr. St. Croix explained that under current procedures, staff sends out notices well in advance of the 72-hour period required by the Sunshine Ordinance. He stated that staff sends notices to all major media in the City, all individuals on the interested person list, all elected officials, and all members of the Commission.

Commissioner Lynn asked why there was such a rush to hold the August 4, 2004 meeting. He noted that Mr. St. Croix failed to answer this question during the SOTF meeting. Mr. St. Croix responded that former Supervisor Hall requested a hearing and that former Chairperson Michael Garcia honored that request.

Commissioner Lynn asked if Mr. St. Croix could look into this issue and make the answer part of the next Executive Director's Report. Mr. St. Croix responded that this complaint, as well as the complaint which was referred to and ultimately dismissed by the Oakland Public Ethics Commission, had consumed an inordinate amount of his time, thereby hampering his ability to execute and implement his ideas for moving the Commission forward. He said that the Commission should move on.

Public Comment:

Charlie Marsteller said he regretted the timing of the complaint and the nature of the charges. Although he questioned why the Commission did not wait five days before

holding the August 4 meeting, he had a very good conversation with former Chairperson Michael Garcia and was satisfied that there was no impropriety.

Mr. Pilpel stated that he agreed that the Board of Supervisors was not an enforcement authority, but that the SOTF has referred other matters to the Board of Supervisors and generally the Board has taken no action on these matters. He stated that there was sound public policy behind the Brown Act's requirement that such complaints be filed within 90 days of the alleged violation, and that Mr. St. Croix had taken sufficient steps to respond to this issue and the expenditure of any additional staff time on this matter would be wasteful.

Chairperson Gusukuma stated that regardless of the merits of the complaint, the process was now in the hands of the Board of Supervisors. She stated that to the extent that this complaint process is being used to influence or manipulate decisions with respect to Commission staff, it was completely inappropriate and unseemly for anyone to use this process to affect personnel decisions. She added that it is especially an affront because the whole purpose of the Ethics Commission is to stay neutral and outside the political fray.

The Commission went into recess at 7:27 p.m.

At 7:37 p.m., the Commission reconvened its meeting.

- Possible delegation of authority to the Executive Director regarding waiver request - the Ethics Commission received a waiver request from former Supervisor Matt Gonzalez, who wishes to practice law that would necessitate interaction with the City Attorney's office and the District Attorney's office. Under the Commission's regulations, the waiver request was submitted too late to be considered at this meeting. However, the Commission may delegate authority to make this decision to the Executive Director. Otherwise, Mr. Gonzalez can request an expedited decision that would be heard and decided by the Executive Director, subject to subsequent overrule by the Commission.

Executive Director St. Croix explained that because the Commission did not receive the waiver request five days in advance of tonight's meeting, the Executive Director would hold a special hearing on March 15, 2004, regarding the waiver request. Mr. St. Croix stated that after the special hearing, he would issue a decision and the Commission could overturn his decision at either of the next two regular Commission meetings.

Enrique Pearce, representative for Mr. Gonzalez, stated that the prohibition at issue is a prohibition against certain communications and not one against the practice of law. He explained that in the normal duties in his capacity as a private practitioner in both civil and criminal matters, Mr. Gonzalez would need to speak to former colleagues. However, such communications would not be for the purpose of lobbying or exerting undue influence.

Public Comment:

Mr. Pilpel inquired if there would be additional information made available at the March 15 hearing. Mr. St. Croix stated that he would issue an analysis after the hearing. Mr. Pilpel reiterated his suggestion that the Commission recover the cost of the hearing.

Motion 05-03-14-4 (Hansen/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission delegate authority to make the decision to the Executive Director and that a review of the decision be calendared for the April meeting.

- Follow-up discussion of Major Donor filings - discussion of procedure to follow FPPC guidelines for fining late-filing major donors and comparison of filings from major donors versus recipient committee filings (Forms 461 and 460, respectively).

Director St. Croix explained that Commission staff had decided to use the enforcement matrix, which was based on the Fair Political Practices Commission model. The Commissioners discussed various aspects of this issue, including waiver requests and statute of limitation constraints.

Public Comment:

Jim Sutton, Sutton Law Firm, inquired about the basis was for the four-year statute of limitations. He stated that Commission staff had administered the procedure inconsistently.

Mr. Pilpel stated that both late filers and non-filers should be penalized and that the Commission should strive to promote future compliance with the law.

1. Executive Director's Report - an update of important Ethics Commission staff activities since the previous monthly Commission meeting, including

budget update.

Executive Director St. Croix highlighted a few items, including: 1) Supervisor Mirkarimi's resolution calling for unsealing the documents related to the PG&E settlement; 2) he was meeting with the Mayor's budget staff tomorrow; and 3) the Board of Supervisors approved the \$87,000 supplemental request.

Public Comment:

Mr. Marsteller stated that the Mayor had acknowledged the Commission's budget woes in a recent media clipping.

IX. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

- Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

Chairperson Gusukuma requested that a discussion of the complaint process be put on the agenda for the next meeting.

Commissioner McCoy requested that the loophole related to post-employment restriction waivers be put on the agenda for the next meeting.

Commissioner Lynn requested that the Commission ask departments, when they complete their Statements of Incompatible Activities, whether they place gag orders on their staff. He also stated that the Commission should meet more frequently.

Commissioner Hansen requested that the lobbyist program be placed on the agenda for the next meeting. She also requested that the enforcement process be calendared

for the next meeting. Lastly, she requested that the Commission calendar the Executive Director's decision regarding former Supervisor Matt Gonzalez's waiver request.

Public Comment:

There was no public comment.

X. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting.

Executive Director St. Croix stated that the Commission had taken the following action: 1) adopted legislation regarding full disclosure of sponsors of electioneering communications; 2) discussed the findings of the Sunshine Ordinance Task Force at their February hearing; 3) delegated authority to the Executive Director to hold a hearing regarding former Supervisor Matt Gonzalez's request for a post-employment restriction waiver; and 4) discussed the disposition of fines for late-filing major donors.

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

XII. Adjournment

Motion 05-03-14-5 (McCoy/Anglade):Moved, seconded, and unanimously passed (5-0); that the Commission adjourn.

The meeting was adjourned at 9:35 p.m.

Respectfully submitted,

Richard Mo

Legal Analyst/Investigator

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SAN FRANCISCO ETHICS COMMISSION

NOTICE OF REGULAR MEETING

April 11, 2005, 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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- 05.
- I. Call to order and roll call.
 - II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
 - III. Legislation to require non-lobbyists who are paid to deliver public testimony to reveal that they are paid for such efforts and to reveal further the identity of their sponsor(s). (Discussion and possible action.)
 - IV. Waiver decision follow-up. On March 17, 2005 the Executive Director granted a limited waiver from Campaign and Governmental Code section 3.234 (post-employment restrictions) to former Supervisor Matt Gonzalez that allows him to practice law that would necessitate interaction with the City Attorney's office or the District Attorney's office. The Commission wishes to discuss this waiver and may choose to overturn it at this meeting or the next monthly meeting. (Discussion and possible action.)
 - V. Waiver request from Campaign and Governmental Code 3.224 (compensated advocacy ban). Erica Craven, a sitting member of the Sunshine Ordinance Task Force, has requested a waiver that would allow her to represent private parties before other City officers and employees as part of her duties as a media attorney while continuing to serve on the Task Force. (Discussion and possible action.)
 - VI. Presentation of the Written Report on the Public Financing Program for the November 2, 2004 Election. The report must be presented to the Mayor and Board of Supervisors. Staff will present an oral summary to the Commission. A copy of the draft report is posted on the Commissioner web site as of Wednesday, April 6, 2005. (Discussion and possible action.)
 - VII. Legislation to regulate electioneering communications. The Board of Supervisors has made a material amendment to legislation approved by the Ethics Commission at the March meeting and referred one version of the bill back to the Commission for possible further action. (Discussion and possible action.)
 - VIII. Presentation of current Investigation/Enforcement Process. Staff presentation and preliminary discussion of enforcement process as requested by the Commission. (Discussion item.)



IX. Discussion and adoption of changes to the Ethics Commission By-laws to bring them in conformity with Proposition E adopted by the voters in November 2003. The changes clarify the conditions of appointment and post-employment restrictions that are applicable to Commission members and employees. (Discussion and possible action.)

X. Closed Session. Closed session held pursuant to Charter section C 3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff.

Number of possible cases: 5

XI. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation as plaintiff.

XII. Approval of the minutes of the regular meeting of March 14, 2005. (Discussion and possible action).

XIII. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)

XIV. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

XV. Summary of Commission Action. Commissioners will develop and approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting. (Discussion and possible action.)

XVI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XVII. Adjournment.

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SF Ethics Commission

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April 11, 2005

(Approved as amended 07/11/05)

**Minutes of the Regular Meeting of the
San Francisco Ethics Commission
City Hall, One Dr. Carlton B. Goodlett Place , Room 408
April 11, 2005**

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I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 5:42 p.m.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Joe Lynn, Commissioner; and Eileen Hansen, Commissioner. Absent: Michele Anglade, Commissioner; Waukeen McCoy, Vice-Chairperson.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator; Shaista Shaikh, Public Finance Administrator.

OFFICE OF THE CITY ATTORNEY: Julie Moll, Deputy City Attorney.

OTHERS PRESENT: David Owen, Legislative Aide to Supervisor Aaron Peskin; Kevin Heneghan, Sutton Law Firm; Charlie Marsteller; David Pilpel; Bruce Brugmann, San Francisco Bay Guardian; Richard Knee; Erica Craven; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Draft Legislation re: Paid Testimony Disclosure, March 30, 2005

Memo from Executive Director re: Post Employment Restriction Waiver for Matt Gonzalez,

March 17, 2005

Memo from Executive Director re: Compensated Advocacy Restriction Waiver for Erica Craven, April 5, 2005

Report on San Francisco 's Limited Public Financing Program, April 11, 2005

Draft Legislation re: Regulation of Electioneering Communications, April 6, 2005

San Francisco Ethics Commission Complaint Process, April 11, 2005

Ethics Commission Regulations for Investigations and Enforcement Proceedings

Memo from Executive Director re: Proposed Amendments to By-Laws, March 30, 2005

Draft Minutes of the Regular Meeting of March 14, 2005

Executive Director's Report for the Meeting of April 11, 2005

5-Month Target Goals, Ethics Commission, 2005

Materials distributed at the meeting:

Revenues Received as of April 7, 2005

Visualizing Campaign Finance Data in San Francisco

Notice of SF Ethics Commission Interested Persons Meeting re: CFRO Amendments

Letter from Erica Craven to Executive Director re: Compensated Advocacy Restriction Waiver Request, April 7, 2005

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

David Owen, Legislative Aide to Supervisor Peskin, stated that the Board reviewed and approved the proposed legislation regarding electioneering communications. The Board severed the proposed legislation into two files – one was the original version as

proposed and the other contained a change that added to the definition of "internet communications." Mr. Owen stated that both versions empowered the Commission to adopt and implement the regulation.

III. Legislation to require non-lobbyists who are paid to deliver public testimony to reveal that they are paid for such efforts and to reveal further the identity of their sponsor(s).

Executive Director John St. Croix noted that this legislation did not require any action by the Ethics Commission and was provided to the Commission as a courtesy by Supervisor Ma's office. He explained that the proposed legislation would require anyone who does not qualify as a lobbyist, but who is paid by someone else to deliver testimony before a city body, to disclose the payment and the identity of the person making the payment.

Commissioners Hansen and Lynn voiced concerns that the \$100 penalties were inadequate. Commissioner Hansen expressed concern that the legislation does not address those who speak on behalf of others but who are not compensated, and that the law would present challenges for enforcement.

There was a discussion among the Commissioners concerning extending the provisions of the legislation to registered lobbyists; the issue of willful negligence versus mere negligence; whether the Commission "shall" enforce the legislation; and whether all policy bodies should be covered.

Public Comment:

David Pilpel stated that the proposed legislation creates a two-tiered system of those who need to disclose payment and those who do not. He stated that the proposed legislation contained inconsistencies with regards to references to advisory bodies and task forces.

Anita Mayo, Pillsbury Winthrop, stated that political speech is a protected category and any legislation regulating such speech must pass a strict scrutiny test and be narrowly-tailored. She stated that the regulations imposed by the Lobbyist Ordinance are narrowly-tailored and therefore pass this test. However, the proposed legislation is unreasonable and overbroad.

Charlie Marsteller stated that the Board of Supervisors needs to understand who is speaking and that it is incumbent upon the Commission to give the Board its best advice.

Commissioner Gusukuma asked Executive Director St. Croix to send a letter to Supervisor Ma's office, summarizing the concerns raised by the Commission and the public.

IV. Waiver decision follow-up. On March 17, 2005 the Executive Director granted a limited waiver from Campaign and Governmental Code section 3.234 (post-employment restrictions) to former Supervisor Matt Gonzalez that allows him to practice law that would necessitate interaction with the City Attorney's office or the District Attorney's office.

Executive Director St. Croix explained the parameters of the waiver and the rationale behind the decision to grant the waiver. He noted that Mr. Gonzalez declined his suggestion that Mr. Gonzalez appear at tonight's meeting.

Commissioner Hansen expressed disappointment that Mr. Gonzalez failed to appear at the meeting. She stated that she preferred a narrower scope, but that she supported the Executive Director's decision.

Commissioner Lynn mentioned the extent to which *Baron v. City of Los Angeles* (2 Cal.3d 535, 1970) limited the Commission's ability to restrict attorney's activities.

Public Comment:

Mr. Marsteller stated that there were different types of law that could be practiced without violating the post-employment restrictions.

Mr. Pilpel inquired if the Commission could further limit the scope of the waiver or if it could only overturn the Executive Director's decision.

Director St. Croix explained that the waiver process was only one year old and there was now a body of evidence that the Commission may use to fine-tune the process.

Deputy City Attorney Julie Moll explained that the waiver process is spelled out for each requestor, so the requestor is on notice that the Commission may review and even overturn the administrative decision.

- **Waiver request from Campaign and Governmental Code 3.224 (compensated advocacy ban).** Erica Craven, a sitting member of the Sunshine Ordinance Task Force ("SOTF"), has requested a waiver that would allow her to represent private parties before other City officers

and employees as part of her duties as a media attorney while continuing to serve on the Task Force.

Commissioner Lynn questioned the propriety of Deputy Executive Director Mabel Ng handling this particular waiver request, as Ms. Ng is a respondent regarding a SOTF complaint now before the Board of Supervisors.

Chairperson Gusukuma asked the City Attorney if the Commission had to vote on the point of order.

Executive Director St. Croix explained that it was up to the Chair to decide whether to sustain Commissioner Lynn's point of order.

Chairperson Gusukuma stated that she would sustain the point of order and the Commission would proceed without consideration of Ms. Ng's memo.

Ms. Craven stated that she was not sure that she was even on the SOTF when the matter involving Ms. Ng was put before a vote. She explained that because her law firm represented media clients, issues arise quickly and she needed to be able to quickly resolve them. She stated that if her waiver request was denied, she would be unable to engage in her vocation and she would have to resign from the SOTF.

Public Comment:

Mr. Pilpel, speaking as an individual, noted that section 3.224(d)(2) applied because Ms. Craven is a fulltime employee of Levy, Ram & Olson LLP. Because she is required to communicate as a part of her regular job duties, the waiver was therefore not required.

Richard Knee, member of the SOTF but speaking as an individual, stated his support for the granting of Ms. Craven's waiver request.

Bruce Brugmann, San Francisco Bay Guardian, stated that it is extremely difficult to find a San Francisco attorney with media experience.

Motion 05-04-11-1 (Lynn/Hansen): Moved, seconded, and unanimously passed (3-0): that the Commission grant Ms. Craven's post-employment waiver request, noting that the waiver applies only for Ms. Craven and not for the SOTF's Seat One.

- **Presentation of the Written Report on the Public Financing Program for the November 2, 2004 Election.**

Shaista Shaikh, Public Finance Administrator, gave a brief overview of the Public Financing Program for the November 2004 Board of Supervisors Election.

Chairperson Gusukuma, Commissioner Lynn and Commissioner Hansen thanked Ms. Shaikh for preparing the report. In response to a treasurer's comment that the 4:1 match should be delayed to conserve public funds for candidates that can run viable campaigns, Commissioner Lynn noted that he opposed such a delay.

Public Comment:

Mr. Pilpel stated that the report was very helpful. He suggested that the report also include information regarding the average amount spent on campaigns by participants and non-participants.

Mr. Marsteller thanked Ms. Shaikh for preparing the report. He noted that the average contribution amount had decreased by \$65.

Executive Director St. Croix noted that this was a draft report and that he would issue a press release upon issuance of the final report.

The Commission went into recess at 7:15 p.m.

At 7:30 p.m. , the Commission reconvened its meeting.

- **Legislation to regulate electioneering communications. The Board of Supervisors has made a material amendment to legislation approved by the Ethics Commission at the March meeting and referred one version of the bill back to the Commission for possible further action. (This item was taken out of order and considered after the closed session in order to determine if at least four members of the Commission would be in attendance.)**

Chairperson Gusukuma explained that the Commission would not take action on this item because fewer than four members were in attendance, and four votes were required to move the legislation if the Commission were inclined to do so.

VIII. Presentation of current Investigation/Enforcement Process. Staff presentation and preliminary discussion of enforcement process as requested by the Commission.

Richard Mo, Investigator/Legal Analyst, gave an overview of the Commission's investigation and enforcement process. He noted that this presentation was the beginning of the Commission's discussion and possible revamping of the investigation and enforcement process.

Commissioner Lynn stated that he did not understand why Commission staff keeps its investigations confidential. He stated that the Los Angeles Ethics Commission settles its cases in public view. He stated that because the complaint process is confidential, the public has no assurances that staff is carrying out its mandates. He asked who was responsible for overseeing the Commission's enforcement staff. He stated that enforcement staff should take a broad interpretation of the law. He asked if the complaint-driven nature of the investigation/enforcement process made the Commission a part of the political scene. He suggested that staff should automatically open all closed files available for public consumption. He asked if the Commissioners could exercise its Charter-mandated duty of managing staff.

Mr. Mo explained that the confidentiality is designed to protect the due process rights of the complainants and respondents. He stated that his work is overseen and supervised by both Executive Director St. Croix and Deputy Executive Director Mabel Ng. Mr. Mo explained that as the sole staff investigator, it was unrealistic for him to take a broad interpretation of the law; rather, his role is to apply the current law to the facts of each individual case, and to make a finding based on this analysis. He further noted that when he joined Commission staff approximately eleven months ago, there were 46 pending cases and that currently there were 34 pending cases.

Commissioner Hansen thanked Mr. Mo for preparing the presentation. She stated that the public perception is that the Commission does not impose enough fines/penalties; fails to enforce the law; and fails to enforce the law in a fair manner. She stated that the Commission should be more proactive in initiating complaints.

Chairperson Gusukuma reminded the Commissioners that this was the beginning of the process and that the goal of tonight's presentation was to focus discussion on the

mechanical aspects of the investigation and enforcement process.

Executive Director St. Croix responded that he and Mr. Mo would prepare a memo to the Commissioners for the May meeting, whereby they would address the concerns raised by the Commissioners. He stated that the current investigation/enforcement program was not ideal, but that was due to a matter of staff having insufficient resources. He also stated that he had full faith and confidence in Mr. Mo's ability to run the investigation/enforcement division of the Commission.

Public Comment:

Mr. Pilpel stated that there have only been two Probable Cause Reports ever prepared by Commission staff. He asked why these reports were not made available for public consumption. He suggested that staff divulge general information about its cases, including the number of pending cases and the number of cases dismissed or settled, so that the public is aware of staff's work.

- **Discussion and adoption of changes to the Ethics Commission By-laws to bring them in conformity with Proposition E adopted by the voters in November 2003. The changes clarify the conditions of appointment and post-employment restrictions that are applicable to Commission members and employees.**

Executive Director St. Croix explained the purpose of the changes to the Commission By-laws.

Public Comment:

There was no public comment.

Motion 05-04-11-2 (Lynn/Hansen): Moved, seconded, and unanimously passed (3-0): that the Commission adopt the changes to its By-laws to bring them in conformity with Proposition E.

- **Closed Session. Closed session held pursuant to Charter section C 3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance 67.10(d) to discuss anticipated litigation as plaintiff.**

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 5

Motion 05-04-11-3 (Lynn/Hansen): Moved, seconded, and unanimously passed (3-0): that the Commission go into closed session.

At 8:23 p.m. , the Commission went into a closed session. The following individuals remained in the room: Chairperson Gusukuma; Commissioner Hansen; Commissioner Lynn; Deputy City Attorney Julie Moll; Executive Director John St. Croix; Deputy Executive Director Mabel Ng; and Legal Analyst Richard Mo.

At 9:45 p.m. , the Commission reconvened in open session.

XI. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose action taken or discussions held in closed session.

Motion 05-04-11-4 (Hansen/Lynn): Moved, seconded, and unanimously passed (3-0): that the Commission not disclose any discussions held in closed session.

Public Comment:

There was no public comment.

XII. Approval of the minutes of the regular meeting of March 14, 2005.

Commissioner Lynn noted a typographical error on page 6.

Motion 05-04-11-5 (Lynn/Hansen): Moved, seconded, and unanimously passed (3-0): that the Commission approve the minutes of the regular meeting March 14, 2005 , with the suggested change.

Public Comment:

There was no public comment.

XIII. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting.

Executive Director St. Croix highlighted a few items, including: 1) the 2005-2006 budget process; 2) the April 19, 2005 Interested Persons meeting regarding possible CFRO amendments; and 3) the April 14, 2005 meeting at USF regarding the online campaign finance database.

Commissioner Lynn stated that he was disturbed that Commission staff issues advice letters without public hearings.

Public Comment:

Mr. Pilpel stated that the Mayor's Office was looking into the availability of expanded office space for Commission staff.

XIV. Commissioner questions and proposed future agenda items.

- **Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.**
- **Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.**

Commissioner Hansen requested that the following items be placed on the May agenda: 1) the lobbyist program and campaign consultant program; 2) a review of the Commission's 5-months goals;

3) clarification regarding communications with the Board of Education by lobbyists; and 4) progress on the budget.

Public Comment:

There was no public comment.

XV. Summary of Commission Action. Commissioners will develop and

approve a short summary of Commission action taken at the meeting and Commission action anticipated for the next meeting to be distributed to members of the public within 24 hours of the conclusion of the meeting.

The Commission delegated this task to the Executive Director and decided that this item will no longer appear on future agendas.

Public Comment:

There was no public comment.

XVI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Mr. Pilpel suggested that Commission staff survey the publicly-financed candidates from the November 2004 supervisorial election.

XVII. Adjournment.

Motion 05-04-11-6 (Lynn/Hansen):Moved, seconded, and unanimously passed (3-0): that the Commission adjourn.

The meeting was adjourned at 10:15 p.m.

Respectfully submitted,

Richard Mo

Legal Analyst/Investigator

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SF Ethics Commission

TEXT ONLY:



PRINT:



TEXT SIZE:



April 18, 2005

30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
MONDAY, APRIL 18, 2005, 6:00 P.M.
AGENDA**

Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Legislation to regulate electioneering communications – The Board of Supervisors has forwarded proposed legislation amending the Campaign and Governmental Conduct Code to require that electioneering communications identify who paid for the communication; the legislation also requires reporting of spending on communications over \$1,000.

The Board of Supervisors has made a material amendment to legislation approved by the Ethics Commission at the March meeting and referred one version of the bill back to the Commission for possible further action. (Discussion and possible action.)

IV. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

V. Adjournment.

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www.sfgov.org/ethics.

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Ethics Commission

April 18, 2005

(Approved as amended 05/09/05)

Minutes of the Special Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

April 18, 2005

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MAY 19 2005

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I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 6:08 p.m.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Joe Lynn, Commissioner; Eileen Hansen, Commissioner; Michele Anglade, Commissioner. Vice-Chairperson Waukeen McCoy was excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Kevin Heneghan, Sutton Law Firm; David Pilpel.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Draft Legislation re: Regulation of Electioneering Communications, April 6, 2005

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

III. Legislation to regulate electioneering communications - The Board of Supervisors has forwarded proposed legislation amending the Campaign and Governmental Conduct Code to require that electioneering communications identify who paid for the communication; the legislation also requires reporting of spending on communications over \$1,000.

The Board of Supervisors has made a material amendment to legislation approved by the Ethics Commission at the March meeting and referred one version of the bill back to the Commission for possible further action.

Executive Director John St. Croix explained that the Board made one change to the proposed legislation. Specifically, they added a new definition for what constitutes an "internet communication," in Section 1.161.5(c)(4). He noted that the Board had adopted the legislation upon first reading and a second reading was pending.

Commissioner Hansen stated that she was disappointed that the Commission was unable to vote on this legislation at its April 11, 2005 meeting. She also stated that it would be helpful if Commission staff could inform Commissioners regarding future public hearings, public activities and SFGTV airings that involve legislation relevant to the Commission.

Public Comment:

David Pilpel stated that he was concerned that the proposed legislation was overbroad.

Motion 05-04-18-1 (Lynn/Hansen): Moved, seconded, and unanimously passed (4-0): that the Commission accept the proposed legislation, as amended by the Board of Supervisors.

IV. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

V. Adjournment.

Motion 05-04-18-2 (Hanan/Lynn): Moved, seconded, and unanimously passed (4-0): that the Commission adjourn.

The meeting was adjourned at 6:16 p.m.

Respectfully submitted,

Richard Mo

Legal Analyst/Investigator

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**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

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May 9, 2005, 5:30 P.M.

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and AGENDA

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Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

- 05
- I. Call to order and roll call.
 - II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
 - III. Presentation of the Written Report on the Public Financing Program for the November 2, 2004 Election. The report must be presented to the Mayor and Board of Supervisors. Staff presented an oral summary to the Commission at the April 11, 2005 meeting. The report has been revised to reflect comments made at that meeting. A copy of the revised draft report is posted on the Commission's web site. (Discussion and possible action.)
 - IV. Proposed Campaign Finance Reform Act Regulations (CFRO). Regulations have been drafted for three purposes: to update regulations based on recent amendments adopted by the Ethics Commission and the Board of Supervisors including the regulation of electioneering communications; to implement section 1.135 for the November 2005 election; and to make technical clarifications. While the Commission may adopt these regulations at this meeting, it is likely that they will not do so until the next regular Commission meeting in June, after an interested persons meeting has occurred. A copy of the regulations will be posted to the Commission's web site prior to the meeting. (Discussion and possible action.)
 - V. Continuation of discussion of current Investigation/Enforcement Process. Staff presented a preliminary discussion of the enforcement process at the last monthly meeting. This discussion will continue based on questions posed at the prior meeting. (Discussion item.)
 - VI. Consideration of lobbying of City departments or commissions by City officers or employees from other departments or commissions. When such lobbying is unrelated to the official duties of those officers or employees, should it be included as a criterion in prohibited activities required for inclusion in Statements of Incompatible Activities (listed in section 3.218 of Campaign and Governmental Conduct Code). (Discussion item.)
 - VII. Consideration of whether to amend the post employment provisions of the Campaign and Governmental Conduct Code (section 3.234) and/or the Ethics Commission regulations implementing them to address questions that have arisen about whether waivers from the prohibitions should be permitted, and if so what the process for granting them should be. (Discussion and possible action.)

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- VIII. Approval of the minutes of the regular meeting of April 11, 2005. (Discussion and possible action).
- IX. Approval of the minutes of the special meeting of April 18, 2005 (Discussion and possible action).
- X. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)
- XI. Commissioner questions and proposed future agenda items.
- a) **Inquiries to the Executive Director.** Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.
 - b) **Items for future meetings.** Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- XII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- XIII. Adjournment.

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Minutes of the Regular Meeting of the
San Francisco Ethics Commission
City Hall, One Dr. Carlton B. Goodlett Place, Room 408
May 9, 2005

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I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 5:38 p.m.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Waukeen McCoy, Vice-Chairperson; Michele Anglade, Commissioner; Joe Lynn, Commissioner; and Eileen Hansen, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator; Shaista Shaikh, Public Finance Administrator.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Kevin Heneghan, Sutton Law Firm; Anita Mayo, Pillsbury Winthrop; Rafael Mandelman, Noe Valley Democratic Club; Marc Solomon, David Pilpel, Linda Bjorke, Tairon Kimura; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Draft Report on San Francisco's Limited Public Financing Program

Draft Ethics Commission Regulations Implementing the Campaign Finance Reform

Ordinance, May 3, 2005

Ethics Commission Regulations Interpreting the Campaign Finance Reform Ordinance

San Francisco Campaign and Governmental Conduct Code, Chapter 1 – Campaign Finance

Memo from Executive Director John St. Croix re: Investigations/Enforcement Questions,
May 5, 2005

San Francisco Campaign and Governmental Conduct Code Section 3.218 – Incompatible
Activities

San Francisco Campaign and Governmental Conduct Code Section 3.234 – Post-
Employment Restrictions

Draft Minutes of the Regular Meeting of April 11, 2005

Draft Minutes of the Special Meeting of April 18, 2005

Executive Director's Report for the Meeting of May 9, 2005

Attachment 1 – Revenues Received as of May 3, 2005

Attachment 2 – Memo from Executive Director to Supervisor Fiona Ma re: Proposed
Legislation to Require Non-Lobbyists Who Are Paid to Testify Before City Entities to
Disclose the Source of their Payments



Attachment 3 – Letter from Executive Director to James Sutton re: Lobbyists and Disclosure of Contacts with City Officials, April 18, 2005; E-mail from Deputy Director Mabel Ng to Nancy Bellard, April 15, 2005; Letter from Executive Director John St. Croix to Chip Nielsen, April 15, 2005; Letter from Executive Director John St. Croix to Greg Dewar, April 15, 2005

Ethics Commission Budget Talking Points, Fiscal Year 2005-2006
5-Month Target Goals, Ethics Commission, 2005

Materials distributed at the meeting:

E-mail from Executive Director re: forwarding comments about former Ethics Commissioner Mike Garcia, May 9, 2005

Minutes of the April 12, 2005 Regular Meeting of the Los Angeles City Ethics Commission

Letter from Rafael Mandelman, President of the Noe Valley Democratic Club

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Rafael Mandelman, President of the Noe Valley Democratic Club, presented a letter to the Ethics Commission and addressed a number of concerns that had been raised by some of the democratic clubs in San Francisco. He suggested several reform areas, including the size/amount of the fines; earlier notice; notice to more than one person; updating the Commission's contact lists; and increased community input.

Commissioner Hansen noted that, at the request of the clubs named in the letter, Commissioner Lynn and she had met with the clubs to discuss these matters. She asked that the staff draft a response to Mr. Mandelman, noting agreement with a number of their concerns.

III. Presentation of the Written Report on the Public Financing Program for the November 2, 2004 Election. The report must be presented to the Mayor and Board of Supervisors. Staff presented an oral summary to the Commission at the April 11, 2005 meeting. The report has been revised to reflect comments made at that meeting.

Public Finance Administrator Shaista Shaikh stated that she had amended her initial draft report to reflect changes requested by the Commission.

Vice-Chairperson McCoy and Chairperson Gusukuma thanked Ms. Shaikh for preparing the report.

After discussion among the Commissioners of various aspects of the draft report, Chairperson Gusukuma stated that the public financing program was still relatively new and that questions about how it is working should not be an impediment to the Commission adopting the report.

Motion 05-05-09-1 (McCoy/Anglade): Moved, seconded, and unanimously passed (5-0): that the Commission adopt the draft report.

1. The first part of the paper is devoted to a general discussion of the problem of the existence of a solution of the system of equations

$$\begin{aligned} \Delta u &= f(x, y, z, u, v, w, \dots) \\ \Delta v &= g(x, y, z, u, v, w, \dots) \\ \Delta w &= h(x, y, z, u, v, w, \dots) \end{aligned}$$

where Δ is the Laplace operator, f, g, h are given functions, and u, v, w, \dots are unknown functions. The problem is to find conditions under which a solution exists and is unique.

2. The second part of the paper is devoted to a study of the properties of the solution of the system of equations

$$\begin{aligned} \Delta u &= f(x, y, z, u, v, w, \dots) \\ \Delta v &= g(x, y, z, u, v, w, \dots) \\ \Delta w &= h(x, y, z, u, v, w, \dots) \end{aligned}$$

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3. The third part of the paper is devoted to a study of the properties of the solution of the system of equations

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Public Comment:

David Pilpel thanked staff for putting in the additional information.

- IV. Proposed Campaign Finance Reform Act Regulations (CFRO).** Regulations have been drafted for three purposes: to update regulations based on recent amendments adopted by the Ethics Commission and the Board of Supervisors including the regulation of electioneering communications; to implement section 1.135 for the November 2005 election; and to make technical clarifications. While the Commission may adopt these regulations at this meeting, it is likely that it will not do so until the next regular Commission meeting in June, after an interested persons meeting has occurred.

Executive Director St. Croix explained that the Commission would vote on this item at the next meeting, after the Interested Persons meeting.

The Commission discussed various provisions of the proposed regulations.

Deputy Director Mabel Ng clarified that these regulations only implement existing law.

Public Comment:

Mr. Pilpel made several suggestions for changes to the proposed language.

Anita Mayo, Pillsbury Winthrop, expressed concern that Regulation 1.135-1(a)(1) was preempted by State law. She explained that California Government Code Section 81009.5 prohibits a local jurisdiction from imposing additional filing requirements on committees. She also noted that the Fair Political Practices Commission has issued advice letters regarding this issue.

Marc Solomon stated that this was the wrong time of the year to consider these regulations, because of the timing of the upcoming election.

- V. Continuation of discussion of current Investigation/Enforcement Process.** Staff presented a preliminary discussion of the enforcement process at the last monthly meeting. This discussion will continue based on questions posed at the prior meeting.

Investigator/Legal Analyst Richard Mo introduced the Commission's new Assistant Investigator, Linda Bjorke.

Mr. Mo stated that the May 5, 2005 memo addressed questions raised by Commissioners at the April 11, 2005 meeting.

Chairperson Gusukuma stated that she hoped the other Commissioners had a chance to read the May 6, 2005 memo from Deputy City Attorney Claire Sylvia regarding the confidentiality of the complaint process. She suggested that for next month's meeting, staff research and present to

The first part of the report deals with the general situation of the country and the position of the various groups. It is found that the country is in a state of general depression and that the various groups are in a state of general poverty. The second part of the report deals with the specific situation of the various groups and the position of the various groups. It is found that the various groups are in a state of general poverty and that the position of the various groups is generally poor.

The third part of the report deals with the specific situation of the various groups and the position of the various groups. It is found that the various groups are in a state of general poverty and that the position of the various groups is generally poor. The fourth part of the report deals with the specific situation of the various groups and the position of the various groups. It is found that the various groups are in a state of general poverty and that the position of the various groups is generally poor.

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the Commission what portions of the complaint/enforcement process could be made public, within the confines of the law.

Commissioner Hansen suggested that the Commission research how other public ethics commissions handle their complaints/enforcement process. She had some specific proposals for staff: 1) that staff expand the complaint logs from complaints within its jurisdictions to any and all complaints filed with the Commission; 2) that the status of the complaint be more specific; 3) that staff list the date that each complaint was filed; and 4) that staff provide explanation to the Commission regarding how it reaches decisions regarding whether or not to pursue a complaint.

Commissioner Lynn stated that this discussion centers on the weakest part of the Commission. This is the one part of work that the Commission does that has received the most public criticism. He stated that staff has never had an experienced prosecutor, trial attorney, or investigators with prior training in the complicated laws under the Commission's jurisdiction. After ten years of staff investigations, the Commission has never had one public hearing. He noted that the Los Angeles City Ethics Commission makes its settlements part of the public record, and that the Commission has no Sunshine at all in this area. The danger with no Sunshine is that timid enforcement can be seen as corrupt enforcement. This is an important area of what the Commission does and it must consider how it is accountable to the public.

Commissioner Lynn suggested two ways whereby the Commission could exercise management over the complaints/enforcement staff/process. First, the Commission could increase its size and appoint a certain number of Commissioners to be managers of the prosecutors and reserve to the other Commissioners the job of being adjudicators. This would be one way of handling the problem of the lack of management. He noted that while Los Angeles does not have direct Commission management of the prosecution, the problem in Los Angeles is not a failure of results from the investigation team, but that some claim that the Los Angeles staff is too aggressive.

Chairperson Gusukuma stated that she did not want to craft a whole new investigation process during this meeting. She stated that suggestions were welcome, but that she wanted to move this discussion forward.

Commissioner Lynn stated that the Commission could appoint masters to hear the facts and that under the current regulations, the Commission has this ability. He stated that to the extent that his thoughts make sense, it would be dependent on how seriously the Commission thinks it has been damaged by the public perception that it does not have an enforcement program.

Chairperson Gusukuma requested that staff look into the two options mentioned by Commissioner Lynn. She stated that the Commission probably could not expand its size, and that the appointment of masters would be at a substantial financial cost and may not be feasible.

Commissioner Lynn requested that the City Attorney research the issue of what State law requires and/or allows staff to do with regards to the disclosure of closed enforcement files.

Executive Director St. Croix stated that he understood that the reputation of the Los Angeles City Ethics Commission was something worth emulating, but Los Angeles has five, and soon to be seven, full-time investigators, as well as more than twice the budget of the San Francisco Ethics Commission. Despite the Commission's limited resources, he had full faith and confidence in the work performed by Mr. Mo and Ms. Bjorke. Any public perception of the enforcement staff being ineffective is due to a lack of funding prioritization by the Mayor and the Board of Supervisors.

Commissioner Lynn stated that he agreed that the lack of resources affects the enforcement staff. He stated that perhaps the Commission should adopt a different type of prioritization of the complaints that staff investigates. Currently, the investigation process is complaint-driven. He stated that the Commission itself could prioritize the complaints and direct staff's efforts.

Public Comment:

Mr. Pilpel asked if staff could incorporate Item #2 in Executive Director St. Croix's May 5, 2005 memo, regarding a subject matter breakdown of current complaints, into the Executive Director's Report.

- VI. Consideration of lobbying of City departments or commissions by City officers or employees from other departments or commissions. When such lobbying is unrelated to the official duties of those officers or employees, should it be included as a criterion in prohibited activities required for inclusion in Statements of Incompatible Activities ("SIAs.")**

Commissioner Hansen expressed concern that the activities proscribed by the SIAs are not inclusive or specific enough. Specifically, she noted that Section 3.218(c)(1) contained appropriate language but it did not go far enough.

After substantial discussion of whether City officials should be able to testify at the proceedings of other boards and commissions, the Commission took public comment.

Public Comment:

Mr. Pilpel stated that he was concerned about potential implications for First Amendment rights of individuals and that any such restrictions should be narrowly-tailored.

The Commission went into recess at 7:25 p.m.

At 7:38 p.m., the Commission reconvened its meeting.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud. The document also outlines the responsibilities of the accounting department in ensuring that all transactions are properly recorded and reported.

The second part of the document describes the various methods used to collect and analyze data. It includes a detailed discussion of the different types of data that can be collected, such as financial data, operational data, and customer data. It also discusses the various techniques used to analyze this data, including statistical analysis, data mining, and machine learning.

The third part of the document discusses the importance of data security and privacy. It outlines the various measures that can be taken to protect data from unauthorized access, loss, or theft. It also discusses the importance of obtaining proper consent from individuals whose data is being collected and used.

The fourth part of the document discusses the importance of data quality. It outlines the various measures that can be taken to ensure that data is accurate, complete, and up-to-date. It also discusses the importance of having a clear process for identifying and correcting data errors.

The fifth part of the document discusses the importance of data governance. It outlines the various measures that can be taken to ensure that data is managed in a consistent and effective manner. It also discusses the importance of having a clear policy for data ownership and control.

The sixth part of the document discusses the importance of data ethics. It outlines the various measures that can be taken to ensure that data is used in a responsible and ethical manner.

VII. Consideration of whether to amend the post employment provisions of the Campaign and Governmental Conduct Code (section 3.234) and/or the Ethics Commission regulations implementing them to address questions that have arisen about whether waivers from the prohibitions should be permitted, and if so what the process for granting them should be.

Commissioner Hansen stated that she was uncomfortable with how the waiver process is working. She stated that the Commission may want to consider the following issues: 1) should there be exemptions from the law, and if so, on what grounds, because every single waiver request has come from an attorney; 2) whether five-day notice is adequate; 3) whether the Executive Director or the Commission should be the body that makes the ultimate decision; 4) should the prohibition be extended from one year to two years; 5) what is the penalty with non-requestors; 6) how does the Commission enforce this law?

Chairperson Gusukuman asked Commissioner Hansen if she had any specific suggestions.

Commissioner Hansen offered the following specific suggestions: 1) waiver decisions be made by the Commission and not delegated to the Executive Director; 2) the five-day notice be extended to two weeks; 3) extend the prohibition from one year to two years; 4) narrowly tailor the exemption for attorneys and specifically whether the waiver addressed the practice of law or the specific areas in which the requestor practices; 5) ban waivers completely.

Vice-Chairperson McCoy stated that he approved of the waiver process, but he did not want employees to come to the Commission and expect that it would be easy for them to obtain a waiver. He stated that he felt that a two-year prohibition was too long; he was not clear as to Commissioner Hansen's suggestion regarding the attorney exemption; and he was unaware of any problems that staff had experienced with the current 5-days notice requirement.

Commissioner Lynn stated that the Commission needed to develop regulations which take the *Baron* case into account. He also stated that the Commission needs to pay attention to how it enforces and monitors the waivers that it grants. He suggested that the Commission require waiver grantees to submit quarterly reports to provide information regarding whom they have contacted and for what purposes. He stated that having the Commission make the waiver decisions would make the Commission more powerful, especially with regards to obtaining additional budgetary support.

Commissioner Anglade stated that a two-year ban would be too long; the Commission needs to better articulate the standards it uses to consider waiver requests; and the Commission should wait for one year before considering whether the current one-year ban is sufficient.

Chairperson Gusukuma stated that a two-year ban is too long and might run afoul of Business and Professions Code Section 16600. She also stated that she did not agree with completely banning the waiver process and that the standards for the current process should be clarified.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY
530 CHICAGO HALL
CHICAGO, ILL. 60637

TO: DR. J. H. GOLDSTEIN
100 UNIVERSITY AVENUE
CAMBRIDGE, MASS. 02138

FROM: DR. R. M. WAYmouth
530 CHICAGO HALL
CHICAGO, ILL. 60637

SUBJECT: 1,2-DICHLOROETHANE
C₂H₄Cl₂

RE: 1,2-DICHLOROETHANE
C₂H₄Cl₂

1,2-DICHLOROETHANE
C₂H₄Cl₂

1,2-DICHLOROETHANE
C₂H₄Cl₂

1,2-DICHLOROETHANE
C₂H₄Cl₂

Public Comment:

Mr. Pilpel noted that there have been five post-employment waiver requests and that former-Supervisor Tony Hall is not an attorney. He stated that waivers, if granted, should be granted by the Commission, except in cases where there is a timing issue. He stated that the Commission should quantify staff costs and bill people who request waivers for their work.

VIII. Approval of the minutes of the regular meeting of April 11, 2005.

Commissioner Anglade stated that while she was not present at the April 11, 2005 meeting, she read the draft minutes and felt that Commissioner Lynn's comments regarding Deputy Director Mabel Ng and Erica Craven's waiver request were inappropriate.

Commissioner Lynn stated that the minutes were inaccurate and did not reflect what he said. He stated that he had said the circumstances were such that someone might conclude that Ms. Ng was using the waiver process as political payback. He stated that he had raised a point of order, which was sustained by the Chair.

Commissioner Lynn requested the following amendments to the minutes:

Item III, add the following sentence before the public comment section: "There was a discussion concerning extending provisions of the legislation to registered lobbyists."

Item IV, add the following sentence before the public comment section: "There was a discussion concerning the extent to which the *Baron* case limited our abilities to restrict attorneys' activities."

Commissioner Hansen requested that staff provide more extensive minutes because the Commission has good discussion during its meetings, and that the minutes should reflect such and that the public should be aware of these discussions. Commissioner Hansen suggested several other amendments with regards to the items discussed by the Commission in Section III, noting that there were some points made in the April 15, 2005 memo to Supervisor Ma that had not been included in the minutes: 1) April 15, 2005 memo to Supervisor Ma; 2) the need to look at willful negligence vs. negligence; 3) whether the Commission "shall" enforce the legislation; and 4) all policy bodies should be covered.

Chairperson Gusukuma stated that it was not possible for the minutes to be as detailed as a transcript. Executive Director St. Croix stated that preparing the minutes is a very time-consuming process and that the Commission's minutes are among the most detailed among all City agencies and commissions.

Commissioner Hansen suggested that staff use the phrase "after substantial discussion" to indicate areas where the Commission engaged in lengthy discussion.

TABLE I		Summary of the results of the experiments	
Experiment	Results	Experiment	Results
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Public Comment:

Mr. Pilpel stated that the Commission's minutes are a model for other City agencies.

Motion 05-05-09-2 (Lynn/Anglade): Moved, seconded, and unanimously passed (5-0): that the Commission table consideration of the draft minutes of the regular meeting of April 11, 2005, until the June 13, 2005 regular meeting, when staff submits changes suggested by the Commission.

IX. Approval of the minutes of the special meeting of April 18, 2005.

Vice-Chairperson McCoy asked if the minutes could state that he was "excused" rather than "absent."

Public Comment:

None.

Motion 05-05-09-3 (Anglade/Lynn): Moved, seconded, and unanimously passed (5-0): that the Commission adopt the draft minutes of the special meeting of April 18, 2005, as amended.

X. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting.

Executive Director St. Croix stated that he and Commissioner Hansen had met with Supervisors Daly, Mirkarimi, Peskin, Ma and staff of McGoldrick, concerning the Commission's 2005-2006 budget. He reported that some progress had been made with the Mayor's Office. He noted that staff would be moving its offices to 25 Van Ness by April 2006 and that this would result in additional space of fifty percent. He stated that staff would postpone its audit selection procedure until it receives budget information from the Mayor's Office.

Public Comment:

Mr. Pilpel inquired about the pool of committees and candidates for the audit process; whether the new MOU with BDR had been created; how much in delinquent fines was owed to BDR; and whether staff could post a list of all lobbyist employees on the web.

XI. Commissioner questions and proposed future agenda items.

- a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.
- b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

Commissioner Hansen requested that the following items be considered for future meetings:

- 1) discussion of how the Commission, as a policy body, decides what comes out of its meetings;
- 2) discussion of the concerns raised by smaller clubs/committees;
- 3) continuation of discussion of the investigations/enforcement process;
- 4) continued discussion of the use of prestige of office, as it relates to SIAs;
- 5) continued discussion of post-employment restriction waivers; and
- 6) review of communications between the Board of Education and lobbyists.

Commissioner Lynn requested the following items be considered for future meetings:

- 1) extension of the Lobbyist Ordinance to non-City agencies such as the Treasure Island Development Authority;
- 2) with regards to enforcement, how to make City Attorney opinions available to the public and how to waive the attorney-client privilege; and
- 3) the Municipal Executives Association bonus for the Executive Director.

After discussion, the Commission agreed upon the following dates and meetings: 1) May 24, 2005, Special Meeting re: CFRO regulations; and 2) June 21, 2005, Special/Interested Persons meeting re: CFRO amendments.

Public Comment:

Mr. Pilpel inquired if the Commission had jurisdiction to regulate non-City agencies, such as TIDA, for purposes of enforcing the Lobbyist Ordinance.

XII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Mr. Pilpel inquired if enforcement staff could provide data regarding the number of complaints filed since the Commission's creation, as well as the number of complaints that resulted in settlements.

XVII. Adjournment.

Motion 05-05-09-4 (McCoy/Anglade): Moved, seconded, and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 9:02 p.m.

Respectfully submitted,

Richard Mo
Legal Analyst/Investigator



Ethics Commission



30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING**

DOCUMENTS DEPT.

May 24, 2005, 5:30 P.M.

MAY 13 2005

and AGENDA

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Room 34 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

Please note: this is not the Commission's regular hearing room.

The Commission will hold a special meeting on May 24, 2005 to obtain public input on proposed regulations for the Campaign Finance Reform Act (CFRO). This meeting will be conducted as an "Interested persons meeting," the purpose of which is to solicit the views of the public on the topic under consideration. Thus, if there is a lack of quorum for a Commission meeting, the staff will still proceed with an information gathering session. If you would like to register for this interested persons meeting, please call the Ethics Commission at 581-2300, or email us at ethics.commission@sfgov.org. If you cannot attend, please convey your questions and comments about the draft and other possible regulations to the CFRO by email or by fax at 581-2317.

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Proposed Campaign Finance Reform Act Regulations (CFRO). Discussion of proposed CFRO regulations. The proposed regulations: (1) update regulations based on recent amendments to CFRO including the regulation of electioneering communications; (2) implement section 1.135, which requires disclosure by committees that contribute or spend \$500 or more in calendar month in the 6 months before an election; and (3) make technical clarifications. The Commission began consideration of these proposed regulations at its May 9, 2005 meeting and will continue to consider these regulations at its June 13, 2005 meeting. A copy of the regulations is posted to the Commission's web site at <http://www.sfgov.org/site/uploadedfiles/ethics/draft%20regs%2005.05.pdf>. (Discussion.)
- IV. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- V. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Adele Destro by mail to Interim Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotf@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Destro or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION
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SF Ethics Commission

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May 24, 2005

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(Approved as amended 7/11/05)

**Minutes of the Special Meeting of the
San Francisco Ethics Commission
City Hall, One Dr. Carlton B. Goodlett Place , Room 34
May 24, 2005**

I. Call to order and roll call.

Vice-Chairperson Waukeen McCoy called the meeting to order at 5:42 p.m.

COMMISSION MEMBERS PRESENT: Waukeen McCoy, Vice-Chairperson; Joe Lynn, Commissioner; Eileen Hansen, Commissioner; Chairperson Emi Gusukuma and Commissioner Michele Anglade were excused.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Charles Marsteller; Anita Mayo, Pillsbury, Winthrop, Shaw, Pittman, LLP; Jim Sutton, Sutton Law Firm; David Pilpel.

MATERIALS DISTRIBUTED:

- 5/3/05 Draft regulations related to Campaign Finance Reform Ordinance
- San Francisco Campaign and Governmental Conduct Code Chapter 1 (CFRO)
- Ethics Commission Regulations Interpreting the CFRO

- Ordinance No. 294-04 (Contribution Limits for Contractors Doing Business with the Unified School District and Community College District)
- Ordinance No. 293-04 (Notification in the Voter Information Pamphlet of a candidate's adoption of voluntary expenditure ceiling)
- Ordinance No. 75-05 (Regulation of Electioneering Communications)

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

**III. Proposed Campaign Finance Reform Act Regulations (CFRO).
Discussion of proposed CFRO regulations. The proposed regulations:
(1) update regulations based on recent amendments to CFRO including the regulation of electioneering communications;
(2) implement section 1.135, which requires disclosure by committees that contribute or spend \$500 or more in calendar month in the 6 months before an election; and (3) make technical clarifications. The Commission began consideration of these proposed regulations at its May 9, 2005 meeting and will continue to consider these regulations at its June 13, 2005 meeting.**

Vice-Chairperson McCoy announced that the Commission was meeting in order to obtain information from the public about the proposed regulations to CFRO. The Commission will not take action at the meeting; rather, it will consider the regulations at the Commission's next regularly scheduled meeting on June 13. If the regulations are adopted, they will be forwarded to the Board of Supervisors. The regulations will be effective 60 days after the date of adoption unless before the expiration of the 60-day period, two-thirds of the Board of Supervisors votes to veto the regulations. He also announced that the Commission will be conducting an interested persons meeting on possible amendments to the CFRO on June 21, 2005 at 5:30 p.m. in Room 34 City Hall.

Executive Director John St. Croix stated that members of the Commission made and received several comments at the last Commission meeting regarding the proposed regulations; some of these suggestions will be folded into the next draft of regulations proposed by staff.

Commissioner Joe Lynn asked why committees making independent expenditures related to ballot measures were exempted from Section 1.135 of the CFRO. Deputy

Executive Director Mabel Ng provided a brief history of section 1.135 and explained that the section was adopted to respond to concerns raised about independent expenditures made regarding candidates, not ballot measures.

Commissioner Lynn asked whether, under section 1.135, a committee that made a \$500 expenditure in May and reported it in a semi-annual report filed in July was required to file a report during the pre-election period. Deputy City Attorney Chad Jacobs clarified that the draft regulation provides that if a committee meets the threshold, it must comply with all the pre-election reporting requirements but it would not report the \$500 contribution twice. The committee will report the \$500 on its semi-annual report and it will file all pre-election reports to disclose activity during those pre-election reporting periods. Commissioner Lynn proposed that the Commission clean up pre-election reporting to make it easier for the public so that if there is no aggregate \$500 activity in the pre-election reporting period, no report is due.

Charles Marsteller asked whether the regulations related to electioneering communications were difficult to draft. Ms. Ng responded that the effort was not particularly difficult although staff did have some questions about whether additional regulations should be drafted. In response to his question about member communications, Ms. Ng said that some of the regulations were based on state and federal regulations.

There was a lengthy discussion about proposed Regulation 1.135-1. Both Anita Mayo and Jim Sutton testified that they believed that the regulation is in conflict with state law. Mr. Sutton stated that the requirement to file skews the balance between the public's right to know and the First Amendment right to participate in elections. He added that the regulation becomes a trap for the unwary. Ms. Mayo said that notwithstanding the fact that San Francisco is a Charter city, the FPPC ruled that San Francisco cannot compel committees active outside of San Francisco to file reports with the Ethics Commission. Commissioner Lynn stated that the policy decision was adopted by the Commission five years ago, but if the policy should be changed, he would like to hear why it should be changed. Commissioner Lynn, Ms. Mayo and Mr. Sutton engaged in further dialogue about the merits of section 1.135 and the proposed regulation.

Mr. Marsteller said that there is a certain amount of redundancy built into reports by the FPPC and the Ethics Commission and that this redundancy may be useful for auditing purposes.

Mr. Sutton said that candidates should be required to notify contributors of filing

requirements, if section 1.135 is to survive legal scrutiny.

Commissioner Lynn recommended that the Commission support pending state legislation that would designate committees active in San Francisco as both city and county committees under the Political Reform Act. He also suggested that perhaps the Commission may wish to increase the \$500 threshold in section 1.135 but also extend the law to committees making expenditures related to ballot measures.

Ms. Mayo asked if the Commission would consider not including major donor committees in proposed Regulation 1.135-1 but waiting so that if the Commission decides that such committees should be included, the Commission can include them in considering amendments that also add a requirement that the candidates notify donors of filing requirements.

IV. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

There was no public comment.

V. Adjournment.

Motion 05-24-1 (Lynn/Hansen): Moved, seconded, and unanimously passed (3-0): that the Commission adjourn.

The meeting was adjourned at 6:37 p.m. Prior to adjournment, Vice-Chairperson McCoy noted that the next Commission meeting will be Monday, June 13, 2005, at 5:30 p.m.

Respectfully submitted,

Mabel Ng

Deputy Executive Director





**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

June 13, 2005, 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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- 05
- I. Call to order and roll call.
 - II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
 - III. Consideration of Assembly Bill 1391 with possible motion to recommend endorsement by the Board of Supervisors/Mayor. AB 1391 (Leno) was adopted by the State Assembly on April 21 (71-0) and is pending before the State Senate. The bill would define general purpose committees that conduct more than 50% of transactions in a consolidated city and county (such as San Francisco) as a city general purpose committee in addition to a county general purpose committee for filing purposes. (Discussion and possible action.)
 - IV. Proposed Campaign Finance Reform Ordinance (CFRO) Regulations. Regulations have been drafted for three purposes: to update regulations based on recent amendments to CFRO including the regulation of electioneering communications; to implement section 1.135 for the November 2005 election; and to make technical clarifications. After initial consideration of the regulations at last month's regular meeting and at an intervening special meeting, the Commission will consider amendments and adoption of these proposed regulations, which are posted on the Commission's web site and available from the Commission's office. (Discussion and possible action.)
 - V. Civil Grand Jury Report 1: The Civil Grand Jury has issued a report on its study of the Ethics Commission and requires the Commission to respond to its findings and recommendations. The Commission will consider a draft response, which is posted on the Commission's web site and available from the Commission's office. (Discussion and possible action.)
 - VI. Civil Grand Jury Report 2: The Civil Grand Jury has issued a report on its study of City grants and contracts and requires the Ethics Commission to respond to one of its findings and one recommendation. The Commission will consider a draft response, which is posted on the Commission's web site and available from the Commission's office. (Discussion and possible action.)
 - VII. Proposed Charter Amendment 1 (File No. 050928): Ethics Commission Funding. Supervisor Mirkarimi has introduced a proposed Charter amendment that would change the methods used to fund the Ethics Commission. The Ethics Commission would, under





SAN FRANCISCO ETHICS COMMISSION

NOTICE OF REGULAR MEETING

June 13, 2005, 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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JUN - 9 2005

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- 105
- I. Call to order and roll call.
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 - V. Civil Grand Jury Report 1: The Civil Grand Jury has issued a report on its study of the Ethics Commission and requires the Commission to respond to its findings and recommendations. The Commission will consider a draft response, which is posted on the Commission's web site and available from the Commission's office. (Discussion and possible action.)
 - VI. Civil Grand Jury Report 2: The Civil Grand Jury has issued a report on its study of City grants and contracts and requires the Ethics Commission to respond to one of its findings and one recommendation. The Commission will consider a draft response, which is posted on the Commission's web site and available from the Commission's office. (Discussion and possible action.)
 - VII. Proposed Charter Amendment 1 (File No. 050928): Ethics Commission Funding. Supervisor Mirkarimi has introduced a proposed Charter amendment that would change the methods used to fund the Ethics Commission. The Ethics Commission would, under



the change, submit a budget based on a study of staffing needs request to the Mayor who would be required to include the submission “as is” in his or her proposed annual budget. The bill would also allow the Ethics Commission to use outside counsel under certain conditions. The Board of Supervisors has requested comment from the Ethics Commission. (Discussion and possible action.)

- VIII. Proposed Charter Amendment 2 (File No. 050925): Service on Selected Boards and Commissions. Supervisor Alioto-Pier has introduced a proposed Charter amendment that would require certain conditions for service on panels that oversee elections, campaigns, lobbying, conflict of interest and other laws. The measure disqualifies anyone who has been, in the previous four years, a candidate for local office, a campaign consultant or a lobbyist. The proposed measure also disqualifies from service anyone who has been convicted of a felony crime involving moral turpitude or lost a professional licence for reasons such as fraud, dishonesty or misconduct. The Board of Supervisors has requested comment from the Ethics Commission. (Discussion and possible action.)
- IX. Proposed Charter Amendment 3 (File No. 050927): Residency Requirements and Holdovers. Supervisor Peskin has introduced a proposed Charter amendment that would: create term limits for City boards and commissions of two successive four-year terms (unless otherwise provided for in the Charter); require that members of Charter Commissions not be absent from the City for more than 90 days in any calendar year (or be subject to investigation by the Ethics Commission); and limit “holdover appointments” to a maximum of 120 days after a term has expired. The Board of Supervisors has requested comment from the Ethics Commission. (Discussion and possible action.)
- X. Waiver Process Amendments: Whether to amend the waiver provision in the post employment provisions of the Campaign and Governmental Conduct Code (section 3.234(a)(1)(E)) and/or the Ethics Commission regulations implementing it. Possible Amendments include: 1) deleting the ability of former employees and officers to seek waivers; 2) extending the notice period before the Commission may consider a waiver request; and 3) eliminating the ability of the Executive Director to grant waivers in lieu of the Commission. (Discussion and possible action.)
- XI. Approval of the minutes of the regular meetings of April 11, 2005 and May 9, 2005, as well as of the special meeting of May 24, 2005. (Discussion and possible action.)
- XII. Closed session. (Discussion and possible action.)
- A. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.
- Conference with Legal Counsel: Anticipated litigation as plaintiff
- Number of possible cases: 6
- B. Closed session held pursuant to the Ralph Brown Act, Government Code section 54957(b) and the Sunshine Ordinance section 67.10(b): Public Employee Performance Evaluation: Executive Director, Ethics Commission.

XIII. Discussion and votes regarding closed session action and deliberations. (Discussion and possible action.)

A. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.

B. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 whether to disclose any action taken or discussions held in closed session regarding public employee appointment/hiring.

Motion: The Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: public employee performance review: Executive Director, Ethics Commission.

XIV. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)

XV. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

XVI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XVII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Adele Destro by mail to Interim Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at volff@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Destro or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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Minutes of the Regular Meeting of the
San Francisco Ethics Commission
City Hall, One Dr. Carlton B. Goodlett Place, Room 408
June 13, 2005

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I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 5:37 p.m.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Joe Lynn, Commissioner; and Eileen Hansen, Commissioner. Excused: Waukeen McCoy, Vice-Chairperson. Commissioner Michele Anglade arrived at 5:41 p.m.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator; Linda Bjorke, Assistant Investigator.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Kevin Heneghan, Sutton Law Firm; Anita Mayo, Pillsbury Winthrop; Rich Perino, Deputy Probation Officers Association; Charles Marsteller, Marc Solomon, David Pilpel, and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Assembly Bill No. 1391, February 25, 2005

Memo from Executive Director John St. Croix re: Additional Proposed Regulations to CFRO,
June 8, 2005

Ethics Commission Regulations Interpreting the Campaign Finance Reform Ordinance, April
2004

Draft Ethics Commission Regulations Implementing the Campaign Finance Reform Ordinance,
June 1, 2005

San Francisco Campaign and Governmental Conduct Code, Chapter 1 – Campaign Finance,
June 2005

Draft Response from Executive Director St. Croix re: Ethics Commission Response to 2004-
2005 Civil Grand Jury Report, "The San Francisco Ethics Commission Budgeting and
Staffing Issues"

Civil Grand Jury Report, "The San Francisco Ethics Commission Budgeting and Staffing
Issues," May 5, 2005

"Thin staffing hampers Ethics Commission, report says; Civil grand jury finds agency falls far
short of duties," San Francisco Chronicle, May 18, 2005

Draft Response from Executive Director St. Croix re: Ethics Commission Response to 2004-
2005 Civil Grand Jury Report, "What is the Difference Between a Contract and a Grant?"

Memo from San Francisco Civil Grand Jury re: "What is the Difference Between a Contract
and a Grant?", May 19, 2005

Memo from Executive Director John St. Croix re: Brief Summary of Three Proposed Charter
Amendments, June 8, 2005

Draft Charter Amendment, File No. 050928 re: Commission Funding, May 26, 2005



Draft Charter Amendment, File No. 050925 re: Minimum Qualifications, May 26, 2005
Draft Charter Amendment, File No. 050927 re: Term Limits and Residency, May 24, 2005
Memo from Executive Director John St. Croix re: Waiver Process Amendments,
June 8, 2005
Draft Minutes of the Regular Meetings of April 11, 2005 and May 9, 2005
Draft Minutes of the Special Meeting of May 24, 2005
Executive Director's Report for the Meeting of June 13, 2005
Attachment 1 – Revenues Received as of June 6, 2005
5-Month Target Goals, Ethics Commission, 2005

Materials distributed at the meeting:

Legislative Digest re: Minimum Qualifications for Commission Members, May 23, 2005
"Lynn Bounces into the Driver's Seat," San Francisco Bay Times, December 11, 2003

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Rich Perino, President of the San Francisco Deputy Probation Officers Association ("DPOA"), stated that during the 2003 election cycle, the DPOA sponsored a Charter amendment to add the DPOA members to the Public Employers Retirement System and paid \$12,500 to a campaign manager to do the work. Subsequently, in November 2004, Commission staff informed DPOA that it owed a fine of \$3,800 for a late major donor report. He expressed concern that the Commission's fining the DPOA for failing to file campaign reports was untimely and disproportionate. He said that the DPOA was not aware of such filing requirements, so it never had knowledge of such duties until one year after it had made its donations, when it received a fine notice from Commission staff. He questioned whether the DPOA's due process rights were being violated. Commissioner Hansen responded that other groups had expressed similar concerns and asked whether it would be helpful to have notices sent to two individuals in an organization as a failsafe.

David Pilpel, speaking as an individual, stated that he had several productive conversations with Executive Director John St. Croix regarding the budget process.

III. Consideration of Assembly Bill 1391 with possible motion to recommend endorsement by the Board of Supervisors/Mayor. AB 1391 (Leno) was adopted by the State Assembly on April 21 (71-0) and is pending before the State Senate. The bill would define general purpose committees that conduct more than 50% of transactions in a consolidated city and county (such as San Francisco) as a city general purpose committee in addition to a county general purpose committee for filing purposes.

Executive Director St. Croix explained that AB 1391 was introduced by Assemblymember Leno for the purpose of closing a loophole in the filing obligations of certain committees that qualified as state committees. After discussion among the Commission members, Commissioner Lynn moved that the Commission recommend the endorsement of the bill to the Board of Supervisors and the Mayor's Office.

Marc Solomon testified that the legislation was required to undo a loophole that allowed committees to escape filing campaign reports in odd-numbered years based on a narrowly-tailored FPPC ruling. Charles Marsteller stated that the bill represented a historic moment and that the loophole first

manifested in 1997-1998. He said former Executive Director Ginny Vida took initiative to address this issue, but also stated that the legislative process moved slowly.

Motion 05-06-13-1 (Lynn/Hansen): Moved, seconded, and unanimously passed (4-0): that the Commission recommend endorsement of AB 1391 to the Board of Supervisors and the Mayor's Office.

IV. **Proposed Campaign Finance Reform Ordinance (CFRO) Regulations.** Regulations have been drafted for three purposes: to update regulations based on recent amendments to CFRO including the regulation of electioneering communications; to implement section 1.135 for the November 2005 election; and to make technical clarifications. After initial consideration of the regulations at last month's regular meeting and at an intervening special meeting, the Commission will consider amendments and adoption of these proposed regulations, which are posted on the Commission's web site and available from the Commission's office.

Public Comment:

Anita Mayo, Pillsbury Winthrop, stated that the last sentence of Regulation 1.134-2 was too broad and that this could lead to unintended consequences.

David Pilpel responded that whether Regulation 1.134-2 was too broad depended on the purpose of the statute.

Mr. Pilpel stated that he supported option #1 for Regulation 1.135-1.

Charles Marsteller stated that redundancy in the regulations was important for auditing and enforcement purposes.

Ms. Mayo stated that she supported option #2 for Regulation 1.135-1 because option #1 was contrary to state law.

Marc Solomon stated that he supported option #1 because major donors have access to money.

Ms. Mayo stated that she supported option #4 over option #3 because it tracked state law.

Mr Solomon, Mr. Pilpel and Ms. Mayo commented about the proposed changes to Regulation 1.161.5-1.

After extensive discussion among the Commissioners, the following action was taken:

Motion 05-06-13-2 (Hansen/Lynn): Moved, seconded, and passed (3-1, Commissioner Hansen dissenting): that the Commission adopt staff's proposed amendments for CFRO Regulations 1.108-1, 1.122-1, 1.126-1, 1.128-1, and 1.161-1, with the following changes:

- In Regulation 1.126-1(b), change the title "Completion of Negotiations" to "Date the Contract is Approved." In the text, delete the words "Negotiations are completed when" and change the sentence so that it reads, "A contract is approved when it is

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and the role of the accounting department in ensuring the integrity of the financial statements.

2. It is essential for the company to have a clear understanding of its financial position at all times, and this can only be achieved through a robust system of internal controls and regular audits.

3. The accounting department is responsible for providing timely and accurate information to management, which is crucial for making informed decisions about the company's future.

4. The document also outlines the various methods used to collect and analyze financial data, including the use of spreadsheets and specialized accounting software.

5. It is important to note that the accuracy of the financial statements is directly related to the quality of the data collected and the reliability of the accounting system.

6. The accounting department must ensure that all transactions are properly recorded and classified, and that the financial statements are prepared in accordance with the relevant accounting standards.

7. The document further discusses the importance of maintaining a clear and concise record of all financial transactions, and the role of the accounting department in ensuring that this information is readily available to management.

8. It is also important to ensure that the financial statements are prepared in a timely and accurate manner, and that the accounting department is able to provide reliable information to management.

9. The document concludes by emphasizing the importance of the accounting department in ensuring the integrity of the financial statements, and the role of the accounting department in providing timely and accurate information to management.

10. The accounting department is responsible for providing timely and accurate information to management, which is crucial for making informed decisions about the company's future.

finalized and signed by the City, the Unified School District or the Community College District and the contractor.”

- In Regulation 1.128-1(c), add the words “and Public Notice” after “Notice to Department of Elections;” and add at the end of the sentence following “ceiling” the phrase “and shall also post this information on its website and issue a press release.”

Motion 05-06-13-3 (Lynn/Hansen): Moved, seconded, and defeated (2-2, Commissioners Gusukuma and Anglade dissenting): that the commission adopt staff’s proposed amendments to Regulations 1.134-1 and 1.134-2 except that the statements that a candidate or person “need not file this form if the Ethics Commission has already lifted the applicable expenditure ceiling.”

Motion 05-06-13-4 (Lynn/Hansen): Moved, seconded, and passed (3-1, Commissioner Anglade dissenting): that the Commission adopt option #1 related to staff’s proposed amendment to Regulation 1.135-1.

Motion 05-06-13-5 (Lynn/Anglade): Moved, seconded, and unanimously passed (4-0): that the Commission adopt option #4 related to staff’s proposed amendment to Regulation 1.135-1.

Motion 05-06-13-6 (Lynn/Hansen): Moved, seconded, and passed (3-1, Commissioner Anglade dissenting): that the Commission adopt staff’s proposed amendment to Regulation 1.135-1, with options 1 and 4.

Motion 05-06-13-6 (Anglade/Hansen): Moved, seconded, and unanimously passed (4-0): that the Commission adopt staff’s proposed amendments for CFRO Regulation 1.161.5-1, with the following changes:

- delete the phrase “or by facsimile” from subsection (b); and
- add the term “limited liability partnership” after “limited liability company” in subsection (c)(1)(A).

Motion 05-06-13-7 (Lynn/Hansen): Moved, seconded, and unanimously passed (4-0): that the Commission continue discussion of the proposed amendments to the following CFRO regulations: 1.134-1, 1.134-2 and 1.174-1.

The Commission went into recess at 7:34 p.m. At 7:42 p.m., the Commission reconvened.

V. Civil Grand Jury Report 1: The Civil Grand Jury has issued a report on its study of the Ethics Commission and requires the Commission to respond to its findings and recommendations.

Executive Director St. Croix stated that on May 17, 2005, the Civil Grand Jury released a report on its study of the Commission and that he had prepared a draft response for the Commission’s consideration. After extensive discussion among the Commissioners regarding both the report and the draft response, Chairperson Gusukuma moved that the Commission approve the draft response, with the Executive Director to draft additional language that reflects the discussion among the Commissioners.

Mr. Marsteller questioned why the Mayor's Office was proposing an additional auditor for staff, rather than an additional investigator. Mr. Pilpel stated that he thought the report was comprehensive and that the Commission should issue a press release and post its response on its website. Mr. Solomon stated the purpose of public financing was not to lower campaign expenses, but that staff should look to the findings and purposes of Prop O for language.

Motion 05-06-13-8 (Gusukuma/Anglade): Moved, seconded, and unanimously passed (4-0): that the Commission approve the draft response letter, with changes as discussed to be made by the Executive Director.

VI. Civil Grand Jury Report 2: The Civil Grand Jury has issued a report on its study of City grants and contracts and requires the Ethics Commission to respond to one of its findings and one recommendation.

Executive Director St. Croix explained that the Civil Grand Jury issued a report about how the City awards grants and contracts, and the Commission was required to submit a response. After a brief discussion, Commissioner Lynn moved that the Commission continue this matter until the July meeting.

Mr. Pilpel stated that the report was brief and narrow and he was not sure what the Commission could do, other than to submit its response as drafted.

Motion 05-06-13-9 (Lynn/Anglade): Moved, seconded, and unanimously passed (4-0): that the Commission consider this matter at its July meeting.

VII. Proposed Charter Amendment 1 (File No. 050928): Ethics Commission Funding. Supervisor Mirkarimi has introduced a proposed Charter amendment that would change the methods used to fund the Ethics Commission. The Ethics Commission would, under the change, submit a budget based on a study of staffing needs request to the Mayor who would be required to include the submission "as is" in his or her proposed annual budget. The bill would also allow the Ethics Commission to use outside counsel under certain conditions.

Executive Director St. Croix explained that this proposed Charter Amendment would establish a baseline budget for the Commission and that this budget could not be altered by the Mayor's Office. He also stated that the legislation would allow the Commission to authorize the use of outside counsel under specific limited circumstances.

Mr. Solomon stated that the amendment gives the Commission agency status and establishes a best practices budget for the Commission. Mr. Pilpel stated that it was appropriate for the Commission to submit comments on any technical issues to the Board, but that he would hold his comments regarding the proposal for the Board itself. Mr. Marsteller stated that this issue came before the Commission in 2001. He also stated that the amendment would greatly aid Commission staff in being able to carry out its mandates.

Motion 05-06-13-10 (Hansen/Lynn): Moved, seconded, and unanimously passed (4-0): that the Commission convey to the Board of Supervisors its support for Supervisor Mirkarimi's proposed Charter amendment.

VIII. Proposed Charter Amendment 2 (File No. 050925): Service on Selected Boards and Commissions. Supervisor Alioto-Pier has introduced a proposed Charter amendment that would require certain conditions for service on panels that oversee elections, campaigns, lobbying, conflict of interest and other laws. The measure disqualifies anyone who has been, in the previous four years, a candidate for local office, a campaign consultant or a lobbyist. The proposed measure also disqualifies from service anyone who has been convicted of a felony crime involving moral turpitude or lost a professional licence for reasons such as fraud, dishonesty or misconduct.

Executive Director St. Croix summarized this proposed Charter amendment.

Commissioner Lynn asked if he should recuse himself from this discussion, because the proposed Charter amendment would result in his dismissal from the Commission, and that this may be a conflict under San Francisco Campaign & Governmental Conduct Code Section 3.210. Commissioner Hansen concurred with Commissioner Lynn's request to the City Attorney regarding her own need to recuse herself.

Deputy City Attorney Sylvia responded that she needed a few minutes to look into the matter.

The Commission went into recess at 8:47 p.m. At 8:58 p.m., the Commission reconvened.

Ms. Sylvia stated that Section 3.210 would not preclude any Commissioners from discussing this proposed amendment, because that regulation applied to individual conduct, whereas this proposed Charter amendment was general legislation.

After extensive discussion among the Commissioners regarding this proposed legislation, Commissioner Hansen moved that the Commission table discussion of this issue, allowing for the discussion to occur at the Board of Supervisors.

Mr. Pilpel stated the Commission should send comments to the Board now rather than later, because the Board will have taken action on this item before the Commission's next meeting. Mr. Solomon stated that he was against this Charter amendment. Mr. Marsteller stated that he supported the motion to table consideration of this matter because the issue belongs at the Board.

Motion 05-06-13-11 (Hansen/Lynn): Moved, seconded, and passed (3-1, Commissioner Gusukuma dissenting): that the Commission table its discussion of this proposed Charter amendment.

IX. Proposed Charter Amendment 3 (File No. 050927): Residency Requirements and Holdovers. Supervisor Peskin has introduced a proposed Charter amendment that would: create term limits for City boards and commissions of two successive four-year terms (unless otherwise provided for in the Charter); require that members of Charter Commissions not be absent from the City for more than 90 days in any calendar year (or be subject to investigation by the Ethics Commission); and limit "holdover appointments" to a maximum of 120 days after a term has expired.

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Executive Director St. Croix summarized this proposed Charter amendment. After discussion about this proposed Charter amendment, Commissioner Lynn moved that the Commission send its comments to the Board of Supervisors.

Mr. Pilpel stated that the Board of Supervisors refers Charter amendment proposals to departments for purposes of seeking comment and not whether or not the department supports the legislation.

Motion 05-06-13-12 (Lynn/Hansen): Moved, seconded, and unanimously passed (4-0): that the Commission not make a recommendation to support or oppose the proposed Charter amendment but that it suggest that the Board of Supervisors consider the elector provisions related to membership on boards and commissions that are already in the Charter, and that the Commission is concerned that subsection (c) would create an additional mandate on that the Commission that would have a budgetary effect.

- X. **Waiver Process Amendments:** Whether to amend the waiver provision in the post employment provisions of the Campaign and Governmental Conduct Code (section 3.234(a)(1)(E)) and/or the Ethics Commission regulations implementing it. Possible Amendments include: 1) deleting the ability of former employees and officers to seek waivers; 2) extending the notice period before the Commission may consider a waiver request; and 3) eliminating the ability of the Executive Director to grant waivers in lieu of the Commission.

Executive Director St. Croix stated that staff prepared these amendments in response to concerns raised by various Commissioners. After brief discussion, Commissioner Anglade suggested that the Commission table this item because the Commission had more pressing matters on the agenda. Chairperson Gusukuma stated that this item would be moved to the end of the agenda.

XII. Closed session.

A. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

B. Closed session held pursuant to the Ralph Brown Act, Government Code section 54957(b) and the Sunshine Ordinance section 67.10(b): Public Employee Performance Evaluation: Executive Director, Ethics Commission.

Mr. Pilpel stated that Executive Director St. Croix has been doing a fantastic job during his first nine months on the job.

Motion 05-06-13-13 (Lynn/Anglade): Moved, seconded, and unanimously passed (4-0): that the Commission go into closed session.

At 9:44 p.m., the Commission went into a closed session. The following individuals remained in the room: Chairperson Gusukuma; Commissioners Anglade and Lynn; Deputy City Attorney Claire Sylvia; Executive Director John St. Croix; Deputy Executive Director Mabel Ng; Investigator/Legal Analyst Richard Mo; and Assistant Investigator Linda BJORKE. Commissioner Hansen recused herself and left the room.

At 10:55 p.m., Executive Director John St. Croix, Deputy Executive Director Mabel Ng, Investigator/Legal Analyst Richard Mo and Assistant Investigator Linda Bjorke left the room. Commissioner Hansen returned to the room.

At 11:10 p.m., Mr. St. Croix returned to the room.

At 11:25 p.m., Ms. Ng, Mr. Mo and Ms. Bjorke returned to the room.

At 11:32 p.m., the Commission reconvened in open session.

XIII. Discussion and votes regarding closed session action and deliberations.

A. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.

Motion 05-06-13-14 (Anglade/Hansen): Moved, seconded, and unanimously passed (4-0): that the Commission not disclose any discussions held in closed session.

B. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 whether to disclose any action taken or discussions held in closed session regarding public employee appointment/hiring.

Motion 05-06-13-15 (Lynn/Hansen): Moved, seconded, and unanimously passed (4-0): that the Commission not disclose any discussions held in closed session.

Motion 05-06-13-15 (Lynn/Gusukuma): Moved, seconded, and passed (3-1, Commissioner Anglade dissenting): that the Commission table agenda items X, XI and XIV until the July meeting.

At 11:40 p.m., Commissioner Anglade left the meeting.

XI. Approval of the minutes of the regular meetings of April 11, 2005 and May 9, 2005, as well as of the special meeting of May 24, 2005. (Discussion and possible action).

Tabled until the July meeting.

XIV. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting.

Tabled until the July meeting.

XV. Commissioner questions and proposed future agenda items.

- a) **Inquiries to the Executive Director.** Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.
- b) **Items for future meetings.** Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

Table 1: Summary of Data											
Section 1: Overview											
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Commissioner Hansen requested the following: 1) that Executive Director St. Croix contact Supervisor Peskin tomorrow morning to relay the Commission's support of AB 1391; 2) that staff calendar the investigations and enforcement process for the July meeting; and 3) that the Commission hold two meetings a month.

Commissioner Lynn requested that the next Executive Director's Report include information regarding how many employees have filed their Statements of Economic Interests. He also supported Commissioner Hansen's proposal that the Commission hold two meetings a month.

XVI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

XVII. Adjournment.

Motion 05-06-13-16 (Lynn/Hansen): Moved, seconded, and unanimously passed (3-0): that the Commission adjourn.

The meeting was adjourned at 11:45 p.m.

Respectfully submitted,

Richard Mo
Legal Analyst/Investigator

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**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING**

DOCUMENTS DEPT

June 21, 2005, 5:30 P.M.

JUN 15 2005

and AGENDA

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PUBLIC LIBRARY

Room 34 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

Please note: this is not the Commission's regular hearing room.

The Commission will hold a special meeting on June 21, 2005 to consider a waiver request and to obtain public input on possible amendments to the Campaign Finance Reform Act (CFRO). Agenda Item IV of the meeting will be conducted as an "interested persons meeting," the purpose of which is to solicit the views of the public on the topic under consideration. Thus, if there is a lack of quorum for a Commission meeting, the staff will still proceed with an information gathering session. If you would like to register for this interested persons meeting, please call the Ethics Commission at 581-2300, or email us at ethics.commission@sfgov.org. If you cannot attend, please convey your questions and comments about the proposed and other possible amendments to the CFRO by email or by fax at 581-2317.

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Request for waiver from Campaign and Governmental Code 3.224 (compensated advocacy ban). Ephraim G. Hirsch, a sitting member of the Building Inspection Commission occupying the seat mandated to be filled by a structural engineer, has requested a waiver that would allow him to represent private parties before other City officers and employees as part of his duties as a structural engineer while continuing to serve on the Building Inspection Commission. (Discussion and possible action.)
- IV. Discussion of proposed amendments to the Campaign Finance Reform Ordinance (CFRO). In reviewing the CFRO, the Commission has identified several issues in which it seeks to solicit the views of the public. For the purposes of this interested persons meeting, the Commission is soliciting comment on the following topics:
 - Should the definition of charitable organization be limited to 501(c)(3) organizations?
 - Should the definition of qualified campaign expenditures be amended?
 - Should section 1.114 be amended to adjust candidate or committee contribution limits, or to extend limits to ballot measure committees controlled by candidates for City elective office?
 - Should the forfeiture provisions be amended?
 - Should candidates be permitted to accept contributions for post-election legal proceedings before an election?
 - Should section 1.122 be changed to address issues related to Ranked Choice Voting and, if so, how?
 - Should the contractor contribution ban be extended?



- Should the voluntary expenditure limits be deleted or amended?
- Should filing requirements under section 1.128 be amended?
- Should candidates still be permitted to accept the voluntary expenditure ceiling if the expenditure ceiling is lifted before the deadline for filing nomination papers?
- Should section 1.135 be deleted if AB 1391 is enacted? If AB 1391 is not enacted, should the Commission continue to require supplemental reporting?
- Should there be a requirement for contribution recipients to notify donors of the supplemental reports?
- Should the public financing program be expanded to other City elective offices or should the City no longer offer public funds to any candidate?
- Should the amount of public funds available to candidates be changed? Should the matching formulas be changed?
- Should public funds be available to candidates at any earlier time?
- Should additional public funds be disbursed to participating candidates when a nonparticipating candidate spends more than the voluntary cap?
- Should the pro-ration formula be kept, or should funds be disbursed to on a first-come basis?
- Should the requirements related to the purchase of equipment and furniture be changed and, if so, how?
- Should the definition of unexpended funds be amended?
- Should local committees be required to terminate at some point and, if so, when?
- Should the law set forth standards that would presume coordination between a candidate and a person making an independent expenditure?
- Should campaign finance laws be applied to bond measures placed on the ballot by the SFUSD and the Community College District?
- Should money raised for inaugural expenses be subject to contribution limits?
- Should such money be required to be deposited into a candidate's campaign account?
- Should the single bank account rule in section 1.200 of the Campaign and Governmental Conduct Code be modified and/or moved into the CFRO?
- Should the Commission impose late filing fines for forms required solely under the CFRO, and if so, are there any forms that should be exempted from this requirement?

The Commission will consider proposed amendments on these and possibly other topics at future meetings. A copy of staff's memorandum on issues for discussion at this meeting will be available from the Commission at its office or on its web site on Friday, June 17. (Discussion.)

- V. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

VI. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Adele Destro by mail to Interim Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotfa@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Destro or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>



The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317 and web site www.sfgov.org/ethics

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SF Ethics Commission

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June 21, 2005

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(Approved as amended 07/11/05)

Minutes of the Special Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 34

June 21, 2005

I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 5:32 p.m.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Eileen Hansen, Commissioner; and Joe Lynn, Commissioner. Excused: Waukeen McCoy, Vice-Chairperson; and Michele Anglade, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; and Richard Mo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Ephraim Hirsch, President, Building Inspection Commission; Charles Marsteller; Bill Barnes; and Commission staff members Linda Bjorke and Kristian Ongoco.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting:

Memo from Executive Director John St. Croix re: Request from member of the Building Inspection Commission for Waiver of S.F. Campaign & Governmental Conduct Code Section 3.224, June 16, 2005

San Francisco Campaign & Governmental Conduct Code, Chapter 1, June 2005

San Francisco Campaign & Governmental Conduct Code Section 1.200

Issues Related to the CFRO

Materials distributed at the meeting:

Regulations of the FPPC, California Code of Regulations Section 18702.4

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

III. Request for waiver from Campaign and Governmental Code 3.224 (compensated advocacy ban). Ephraim G. Hirsch, a sitting member of the Building Inspection Commission occupying the seat mandated to be filled by a structural engineer, has requested a waiver that would allow him to represent private parties before other City officers and employees as part of his duties as a structural engineer while continuing to serve on the Building Inspection Commission.

Executive Director St. Croix explained the nature of Mr. Hirsch's waiver request. He noted that although he could have held a hearing and ruled on the request because Mr. Hirsch requested an expedited hearing, Mr. St. Croix put it on tonight's agenda as a courtesy to the Commission.

Mr. Hirsch stated that he was appointed by the Mayor to the Building Inspection Commission ("BIC") in January 2005. He holds a structural engineer license, which is a requirement of the commission seat to which he was appointed. At the time of his appointment, he was unaware that he was required to seek any type of waiver from the Ethics Commission. He stated that he believed that Steve Kawa, the Mayor's Chief of Staff, thought that Mr. Hirsch was retired and perhaps that was why no one informed him that he needed to apply for a waiver. He said that previous structural engineers sat at the BIC without any waivers. Mr. Hirsch further explained that he was unaware of any waiver requirement or process, but that he thought it would be a good idea to check with the Ethics Commission to ensure that he was not violating any laws.

Commissioner Hansen inquired if Mr. Hirsch had any particular client projects which required the granting of the waiver. Mr. Hirsch responded that he had one current client for whom he needed to submit building plans to the Department of Building Inspection.

Commissioner Hansen, stating that she agreed with staff's recommendation, also stated that she would like the Commission to consider this waiver request at its regularly scheduled July meeting and

suggested that there needed to be a fuller discussion of the numerous issues raised by this request. She asked Mr. Hirsch why he needed an expedited decision.

Mr. Hirsch responded that he requested an expedited hearing because his client's project was time sensitive. He explained that his client's project involved dry rot and that a construction project next to his client's property would soon prevent access to this dry rot. If there were a delay, even assuming he could gain access to fix the problem, it would be at greater expense to his client. Mr. Hirsch, explaining that his job is his livelihood and the BIC position is non-paying, also stated that if the Commission were unable to consider his waiver request tonight, he would have to seriously consider resigning from the BIC.

Public Comment:

Charles Marsteller inquired if there was a conflict between the Charter provision prohibiting Commissioners from contacting staff and this waiver request.

Deputy City Attorney Chad Jacobs explained that historically, the Charter exempted individuals who were required to represent certain professions on boards and commissions from the conflict of interest laws, including the ban on compensated advocacy. Thus, before 2003, the compensated advocacy ban did not apply to the BIC. With Prop. E, the Commission decided that it would consider waivers from the ban on a case-by-case basis. He also explained that the non-interference clause had been around a long time, and that no one had considered it a violation of that section when previous members of the BIC engaged in discussions with the staff of BIC about their outside employment responsibilities.

Bill Barnes recommended that the Commission reject the waiver request because it means that the commissioner would be able to submit plans to the department and contact department employees on behalf of private clients for compensation.

Mr. Hirsch testified that he rarely contacts the department. He explained that plans are usually submitted by the architect, the owner or the owner's contractor. However, he sometimes must answer technical questions.

Motion 05-06-21-1 (Gusukuma/Lynn): Moved, and not passed (2-1, Commissioner Hansen dissenting): that the Commission grant Mr. Hirsch's compensated advocacy waiver request and allow him to submit his plans to the Department of Building Inspection and communicate with DBI staff regarding questions of a technical nature.

IV. Discussion of proposed amendments to the Campaign Finance Reform Ordinance (CFRO). In reviewing the CFRO, the Commission has identified several issues in which it seeks to solicit the views of the public.

Executive Director St. Croix explained that the purpose of this agenda item is

to receive public input regarding possible proposed amendments to the CRFO.

A discussion among the Commissioners and members of the public ensued. Charlie Marsteller said that approaching changes to the CFRO is like asking "how do you eat an elephant?" He said that Commissioner Lynn's idea to divide and conquer the issues is good but that there are some very complicated issues involved. He believed it was useful for staff to identify technical issues and put those through first as a package. Bill Barnes said that it was important to identify the different stakeholders such as the small clubs and general purpose committees. He also suggested that the Commission establish an end date by which the amendment process should finish.

Chairperson Gusukuma left the meeting at 6:59 p.m., leaving the Commission without a quorum.

V. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

VI. Adjournment.

Motion 05-06-21-2 (Hansen/Lynn): Moved and seconded, and passed (2-0): that the Commission adjourn.

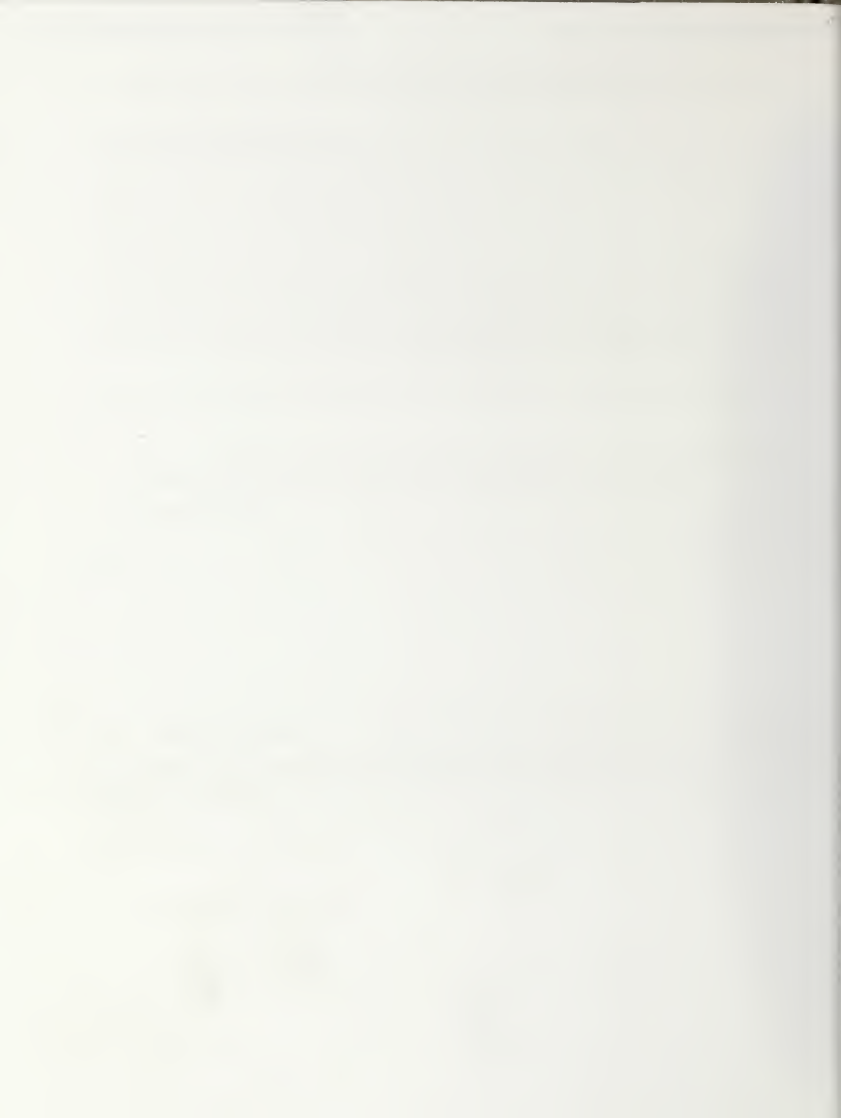
The meeting was adjourned at 7:00 p.m.

Respectfully submitted,

Richard Mo

Legal Analyst/Investigator

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Ethics Commission



30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

July 11, 2005, 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

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- I. Call to order and roll call.
 - II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
 - III. Request for waiver from Campaign and Governmental Code section 3.224 (compensated advocacy ban). Ephraim G. Hirsch, a sitting member of the Building Inspection Commission occupying the seat mandated to be filled by a structural engineer, has requested a waiver that would allow him to represent private parties before other City officers and employees as part of his duties as a structural engineer while continuing to serve on the Building Inspection Commission. A staff report is available at the office and on the Commission web site. (Discussion and possible action.)
 - IV. Approval of the minutes of the regular meetings of April 11, 2005, May 9, 2005, and June 13, 2005, as well as of the special meetings of May 24, 2005 and June 21, 2005. (Discussion and possible action.)
 - V. Performance goals for the Executive Director. The Chairperson and the Executive Director have produced a set of performance goals for the coming year which coincides with Fiscal Year 2005-06. A draft copy is available at the office and on the Commission web site. (Discussion and possible action.)
 - VI. Civil Grand Jury Report: The Civil Grand Jury has issued a report on its study of City grants and contracts and requires the Ethics Commission to respond to one of its findings and one recommendation. The Commission will consider a draft response, which is posted on the Commission's web site and available from the Commission's office. (Discussion and possible action.)
 - VII. Proposed Legislation 1 (File No. 051033): Supervisor Elsbernd has introduced legislation to disqualify any candidate with outstanding fines or penalties for violations of state or local campaign finance laws from participation in the public finance program. It would also render ineligible for five years candidates found by a court to have knowingly, willfully or intentionally violated state or local campaign finance laws. The Board of Supervisors has requested comment from the Ethics Commission. Staff has prepared a



report on the legislation as well as two possible amendments. A draft copy is available at the office and on the Commission web site. (Discussion and possible action.)

- VIII. **Proposed Legislation 2 (File No. 051035):** Supervisor Mirkarini has introduced legislation that would make payments for electioneering communications made at the behest of a candidate a contribution to that candidate. Further, it would impose contribution limits on the amount of payments that can be given or received for the purposed of making electioneering communications and require certain reports from persons making electioneering communications. The Board of Supervisors has requested comment from the Ethics Commission. Staff has prepared a report on the legislation. A draft copy is available at the office and on the Commission web site. (Discussion and possible action.)

- IX. **Staff report on possible changes to the investigation process.** Commissioners have requested that staff look into changes that can be made to make the investigations process less confidential and to what extent the Commission may release records related to an investigation. After extensive interviews with other jurisdictions and research, staff has produced a report making suggestions for the Commission's consideration. (Discussion and possible action.)

- X. **Waiver Process Amendments:** Whether to amend the waiver provision in the post employment provisions of the Campaign and Governmental Conduct Code (section 3.234(a)(1)(E)) and/or the Ethics Commission regulations implementing it. Possible Amendments include: 1) deleting the ability of former employees and officers to seek waivers; 2) extending the notice period before the Commission may consider a waiver request; and 3) eliminating the ability of the Executive Director to grant waivers in lieu of the Commission. (Discussion and possible action.)

- XI. **Proposed Campaign Finance Reform Ordinance (CFRO) Regulations.** The Commission may continue to take action on regulations discussed at the previous regular monthly meeting. The proposed regulations are Regulations 1.134-1, 1.134-2 and 1.174-1, which are available at the office and on the Commission web site. (Discussion and possible action.)

- XII. **Closed session.** (Discussion and possible action.)

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 2

- XIII. **Discussion and votes regarding closed session action and deliberations.** (Discussion and possible action.)

A. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.



Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.

XIV. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The report for this meeting will cover June and July. (Discussion.)

XV. Commissioner questions and proposed future agenda items.

a) **Inquiries to the Executive Director.** Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) **Items for future meetings.** Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

XVI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XVII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

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Minutes of the Regular Meeting of the
San Francisco Ethics Commission
City Hall, One Dr. Carlton B. Goodlett Place, Room 408
July 11, 2005

DOCUMENTS DEPT

I. Call to order and roll call.

JUN 27 2006

Chairperson Gusukuma called the meeting to order at 5:37 p.m.

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COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Waukeen McCoy, Vice-Chairperson; Joe Lynn, Commissioner; and Eileen Hansen, Commissioner. Excused: Michele Anglade, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator; Linda Bjorke, Assistant Investigator.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney; Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Supervisor Sean Elsbernd; Ephraim Hirsch, Building Inspection Commission; Kevin Heneghan, Sutton Law Firm; Anita Mayo, Pillsbury Winthrop; Pat Murphy, Sentinel; David Pilpel, and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting and available to public at the meeting:

Memo from Executive Director John St. Croix re: Request from member of the Building Inspection Commission for Waiver of S.F. Campaign & Governmental Conduct Code Section 3.224, June 16, 2005

Fair Political Practices Commission – Title 2, Division 6, California Code of Regulations Section 18702.3, Determining When a Public Official is using or Attempting to Use His/Her Official Position to Influence a Governmental Decision

Draft Minutes of the Regular Meeting of April 11, 2005

Draft Minutes of the Regular Meeting of May 9, 2005

Draft Minutes of the Special Meeting of May 24, 2005

Draft Minutes of the Regular Meeting of June 13, 2005

Draft Minutes of the Special Meeting of June 21, 2005

Performance Goals for FY 2005-2006, Executive Director John St. Croix

Draft Response from Executive Director St. Croix re: Ethics Commission Response to 2004-2005 Civil Grand Jury Report, "What is the Difference Between a Contract and a Grant?"

Civil Grand Jury Report, "What is the Difference Between a Contract and Grant?" May 24, 2005

Memo from Executive Director John St. Croix to Ethics Commission re: Proposed Amendment to CFRO Section 1.140, July 6, 2005

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Legislative Digest and Proposed Amendments to San Francisco Campaign and Governmental Conduct Code Section 1.140
Memo from Executive Director John St. Croix to Ethics Commission re: Proposed Amendment to Electioneering Communications Legislation, July 6, 2005
Legislative Digest and Proposed Amendments to San Francisco Campaign and Governmental Conduct Code Sections 1.104 and 1.161.5
Memo from Investigator/Legal Analyst Richard Mo and Assistant Investigator Linda Bjorke to Ethics Commission re: Investigations/Enforcement Process and Confidentiality, July 6, 2005
Memo from Executive Director John St. Croix to Ethics Commission re: Proposed Waiver Process Amendments, June 8, 2005
Draft Ethics Commission Regulations Implementing San Francisco Campaign and Governmental Conduct Code sections 1.134 and 1.174
Executive Director's Report for the Meeting of June 13, 2005
Executive Director's Report for the Meeting of July 11, 2005
Attachment 1 – Revenues Received as of June 30, 2005
5-Month Target Goals, Ethics Commission, 2005

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

III. Request for waiver from Campaign and Governmental Code section 3.224 (compensated advocacy ban). Ephraim G. Hirsch, a sitting member of the Building Inspection Commission occupying the seat mandated to be filled by a structural engineer, has requested a waiver that would allow him to represent private parties before other City officers and employees as part of his duties as a structural engineer while continuing to serve on the Building Inspection Commission.

Ephraim Hirsch, President of the Building Inspection Commission, thanked the Commission for the opportunity to appear before them. He stated that as President of the BIC, his position required that he be a structural engineer and a resident of San Francisco. He stated that the only contact he has with DBI staff is when they have a question regarding a calculation in his plans and drawings. Otherwise, the permits are issued directly to the landowner or contractor. Mr. Hirsch stated that he did not want to violate any ethics rules, and that it was an honor to serve on the BIC. He stated that this was his livelihood, and that the State of California grants such waivers.

Commissioner Hansen stated that she wanted to hear public comment regarding this request.

Commissioner McCoy inquired if Mr. Hirsch's status differed from that of his predecessor. Mr. Hirsch responded that he is a solo practitioner and his predecessor had a firm.

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Commissioner Hansen thanked Mr. Hirsch for coming to the Commission meeting. She stated that she hoped the delay in the Commission's consideration of his request would not impact his work. She stated that she had concerns regarding the Commission's waiver process and wanted the Commission to address her concerns. She stated that Mr. Hirsch was in a difficult position. She stated that she was prepared to support his waiver request, but she had great concern about this issue in a broader scope.

Commissioner Hansen moved that the Commission grant Mr. Hirsch's waiver request, provided that he work directly with the DBI department head or specified designee, whenever he needed to interact with the department.

Commissioner Lynn stated that he favored granting the waiver and that he could go either way. He stated that the waiver request provided Mr. Hirsch with a safe harbor, but that the issue was not fully ripe yet. He stated that he read a recent article in the San Francisco Chronicle regarding this particular waiver request. He stated that Mr. Hirsch's conduct had been exemplary and that the exemptions seemed to be provided for in the law.

Commissioner McCoy stated that he felt that Mr. Hirsch should be able to serve on the BIC but he was concerned about the appearance of impropriety.

Chairperson Gusukuma stated that the safeguard of Commissioner Hansen's motion obviated any concern regarding the possibility of undue influence.

Mr. Hirsch stated that he was grateful that a motion was on the table. He stated that if a DBI plan checker contacted him regarding a plan he submitted, he would call Acting Director Amy Lee for permission to respond to the plan checker.

Commissioner McCoy inquired if there had ever been an instance where a plan checker rejected Mr. Hirsch's plan and the BIC subsequently reviewed his plan. Mr. Hirsch responded in the negative and noted that this had never happened in his 30 years of practice. However, if this situation ever arose, he would recuse himself from the matter.

Chairperson Gusukuma inquired how many times Mr. Hirsch had submitted plans to DBI. Mr. Hirsch responded that he submits an average of about three to four plans per year. This year, he had submitted three plans, and he has one that he was waiting to submit, pending approval of his waiver request.

Commissioner Gusukuma inquired how often Mr. Hirsch had contact with DBI staff. Mr. Hirsch responded that he virtually never has contact with DBI staff. When he had contact with DBI staff, it involved the DBI employee asking him to explain a particular detail of the plan. He stated that he once had to meet with a DBI plan checker for purposes of discussing a seismic upgrade to a six-story building.

Commissioner Lynn stated that he was interested in Commissioner McCoy's comments and that the Commission needed to flush these issues out.

Date		Time		Location		Remarks	
1911	10/1	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/2	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/3	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/4	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/5	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/6	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/7	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/8	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/9	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/10	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/11	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/12	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/13	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/14	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/15	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/16	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/17	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/18	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/19	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/20	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/21	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/22	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/23	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/24	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/25	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/26	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/27	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/28	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/29	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/30	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul
1911	10/31	10:00	11:00	St. Paul	St. Paul	St. Paul	St. Paul

Commissioner Hansen stated that the Commission should look at DBI's Statement of Incompatible Activities.

Public Comment:

None.

Motion 05-07-11-1 (Hansen/Lynn): Moved, seconded and unanimously passed (4-0): that the Commission grant Mr. Hirsch's compensated advocacy waiver request and allow him to submit his plans to the Department of Building Inspection and require him to communicate with the department head or his or her designee.

VII. Proposed Legislation 1 (File No. 051033): Supervisor Elsbernd has introduced legislation to disqualify any candidate with outstanding fines or penalties for violations of state or local campaign finance laws from participation in the public finance program. It would also render ineligible for five years candidates found by a court to have knowingly, willfully or intentionally violated state or local campaign finance laws. The Board of Supervisors has requested comment from the Ethics Commission. Staff has prepared a report on the legislation as well as two possible amendments. *(This item was taken out of order as a courtesy to Supervisor Elsbernd.)*

Supervisor Elsbernd explained that he was concerned about how to protect general fund monies that were used for public financing, and he wanted to improve the public financing system. By adding incentives in the campaign finance laws, the Commission could ensure that public monies were being protected and utilized in an effective manner.

He stated that his proposal prohibits two types of candidates from receiving public financing: 1) those candidates found by a court to have intentionally, knowingly or willfully violated certain provisions of the San Francisco Campaign and Governmental Conduct Code or the campaign finance provisions of the California Political Reform Act; and 2) those candidates with outstanding late fines related to violations of the aforementioned laws.

Supervisor Elsbernd stated that with regards to the first provision, the proposed language provided for a high threshold, so that the law would not penalize small players. With regards to the second provision, it was simple language and easily understood.

Commissioner Lynn asked the following three questions: 1) What if a filer is in the process of requesting a waiver or disputing a penalty and should there be a grace period; 2) What happens if the Commission qualifies a candidate for public financing and later discovers that the candidate had not filed a report or had an outstanding fine; and 3) Is there any way to coordinate with the Board of Supervisors regarding their review of CFRO amendments. Supervisor Elsbernd responded as follows: 1) He did not want to penalize anyone with a legitimate claim, and the Commission would be getting more staff to help with this issue;



2) The candidate should be given a reasonable amount of time to settle his fines; and 3) This legislation would not affect the November election, so he wanted to get it moving.

Commissioner McCoy inquired as to the amount of outstanding fines that would trigger the ban. Supervisor Elsbernd responded that if a person violated the law, he or she would be subject to the ban, irrespective of the amount of the violation. However, if a person had an appeal pending, then he or she would be exempt from the ban.

Commissioner Hansen thanked Supervisor Elsbernd for calling her regarding this legislation. She stated that she appreciated staff's additions and suggestions. She stated that she did not want the legislation to languish.

The Commission engaged in a discussion regarding whether there should be a built-in safe harbor so that candidates who are disputing a fine or penalty could still participate in public financing. Several Commissioners concluded that the Commission could address by regulation what constitutes an outstanding fine or penalty.

Public Comment:

David Pilpel stated that if a candidate had outstanding filings or fines, he or she should not be eligible to receive public financing. He inquired if the legislation should include forms/fine owed to the Department of Elections, the Bureau of Delinquent Revenues and other City agencies.

Motion 05-07-11-2 (Lynn/Hansen): Moved, seconded and failed to pass (3-1, Commissioner Hansen dissenting): that the Commission adopt staff's recommendation with the following amendments: 1) on page 2, line 20, add "not been notified by the Ethics Commission that there are" between "Have" and "outstanding", deleting "no", and on line 23, add at the end "which have not been filed." *(An amendment to the CFRO requires a vote of 4/5 of the Commission in order to pass.)*

Commissioner Hansen stated that the legislation needed additional refining and suggested to Supervisor Elsbernd that he perform additional wordsmithing. Supervisor Elsbernd stated that he did not want to have to re-introduce the legislation and suggested that the Commission continue consideration of this matter at its next meeting.

IV. Approval of the minutes of the regular meetings of April 11, 2005, May 9, 2005, and June 13, 2005, as well as of the special meetings of May 24, 2005 and June 21, 2005.

A. Regular Meeting of April 11, 2005

Commissioner Hansen stated that she would like to strike the additional language on page 3, where Commissioner Lynn's comments were taken verbatim and quoted. Commissioner Lynn stated that he wished Commissioner Anglade was present, because she was concerned about the wording of the original minutes. Commissioner Lynn stated that he has asked staff to review the meeting transcript.

Commissioner McCoy stated that the minutes should reflect what was said. He asked if staff listened to the tape of the meeting. Investigator/Legal Analyst Richard Mo answered in the affirmative and stated that the amended minutes reflected Commissioner Lynn's comments verbatim.

Commissioner Hansen made suggestions regarding how Commissioner's Lynn comments should be reflected in the minutes.

Public Comment:

None.

Motion 05-07-11-3 (Lynn/Hansen): Moved, seconded, and passed (3-1, Commissioner McCoy dissenting): that the Commission approve the minutes of the regular meeting of April 11, 2005, with the suggested changes.

B. Regular Meeting of May 9, 2005

Commissioner Hansen made some suggestions regarding the minutes.

Public Comment:

Mr. Pilpel noted a couple of typographical errors.

Motion 05-07-11-4 (Lynn/McCoy): Moved, seconded, and unanimously passed (4-0): that the Commission approve the minutes of the regular meeting of May 9, 2005, with the suggested changes.

C. Special Meeting of May 24, 2005

The Commissioners had no suggested amendments.



Public Comment:

Mr. Pilpel suggested a couple of minor amendments.

Motion 05-07-11-5 (Lynn/Hansen): Moved, seconded, and unanimously passed (4-0): that the Commission approve the minutes of the special meeting of May 24, 2005, with the suggested changes.

D. Regular Meeting of June 13, 2005

Commissioner Lynn stated that the minutes were not adequate and were too spartan. He wanted the Commissioners' comments treated with equal dignity and that these minutes lose their functionality. He stated that the minutes should be more extensive and detailed with regards to what the Commissioners say. He stated that the 1996 Commission minutes were more thorough.

Commissioner McCoy inquired if there were any guidelines for staff to follow. Commissioner Lynn stated that staff should look at the FPPC's minutes, the Los Angeles Ethics Commission's minutes, or the Commission's minutes prior to this year.

Commissioner McCoy stated that staff spends a significant amount of time preparing the minutes. He stated that oftentimes the Commissioners engaged in discussions which go off into left field and that it was impractical to expect staff to include all of the Commissioner's comments in the minutes.

Commissioner Lynn stated that instead of having the minutes reflect a "he said, she said" method, the minutes should state "...some Commissioners thought...others thought..."

Chairperson Gusakuma stated that the June 13, 2005 meeting lasted until almost midnight and that the minutes were sufficient.

Commissioner Hansen stated that she agreed with Commissioner Lynn's request that the meeting minutes be more detailed.

Public Comment:

Mr. Pilpel stated that he supported staff's efforts regarding the minutes. He noted that the Sunshine Ordinance requires that the minutes summarize all public comment; however, there was no such requirement regarding individual Commissioner comments. He also stated that he was concerned regarding Commissioner Hansen's recusal in the minutes, because he was told that there was nothing to report. However, Section 67.12 of the Sunshine Ordinance requires disclosure of votes taken in closed session.

Motion 05-07-11-6 (Hansen/McCoy): Moved, seconded, and passed (3-1, Commissioner Lynn dissenting): that the Commission approve the minutes of the regular meeting of June 13, 2005, with the suggested changes.

E. Special Meeting of June 21, 2005

Commissioner Hansen suggested an amendment on page two.

Public Comment:

None.

Motion 05-07-11-7 (Hansen/McCoy): Moved, seconded, and unanimously passed (4-0): that the Commission approve the minutes of the special meeting of June 21, 2005, with the suggested changes.

V. Performance goals for the Executive Director. The Chairperson and the Executive Director have produced a set of performance goals for the coming year which coincides with Fiscal Year 2005-06.

Executive Director John St. Croix stated that he and Chairperson Gusukuma worked together and created the list of performance goals. Chairperson Gusukuma stated that the list took into consideration comments made by the City Attorney in closed session.

Commissioner Hansen stated that this was a good list. She suggested that the Commission add the following to the list: 1) enforcement of and education regarding Statements of Incompatible Activities; 2) budget planning specifics; and 3) day-to-day duties.

Commissioner Lynn stated that the Executive Director should look at revenues and budget surpluses. He stated that he would like the Executive Director to maintain communication with the Commissioners, as well as the media, regarding the Commission's work.

Chairperson Gusukuma stated that she supported Commissioner Hansen's suggestion regarding budget planning. She stated that she supported Commissioner Lynn's request that the Executive Director maintain communication with the Commissioners and the media. However, she stated that she did not want the Executive Director to have to contact the Commissioners about every single detail and become bogged down by administrative burdens. She also stated that while the Commission should be proactive, she did not want to use this to penalize the Executive Director. Lastly, she stated that she did not understand Commissioner Lynn's comments regarding revenues and budget surpluses.

Executive Director St. Croix stated that he was okay with Commissioner Hansen's suggestions, except for her suggestion regarding SIAs. He stated that the biggest concern was to get the SIAs up and running. Chairperson Gusukuma stated that the Commission will handle the SIAs, not the Executive Director. Commissioner Hansen stated that public education regarding the SIAs was the role of the Executive Director.

Commissioner Lynn stated that SIAs are not where the Commission should slant its limited resources. He stated that Executive Director St. Croix focused on the Commission's

budget during his first year and that he deserved an "A" for his efforts. He stated that he wanted the Executive Director to focus his attention on the professionalism of staff. He also stated that the Commission's budget could have been increased even more.

Public Comment:

Mr. Pilpel suggested that "CFRO" be spelled out in its entirety. He also suggested that the Commission add public education regarding electioneering communications to the list.

Motion 05-07-11-8 (McCoy/Hansen): Moved, seconded, and unanimously passed (4-0): that the Commission approve the draft copy of the performance goals for the Executive Director for Fiscal Year 2005-2006.

The Commission went into recess at 7:38 p.m. At 7:44 p.m., the Commission reconvened.

XII. Closed session.

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 2

Motion 05-07-11-9 (McCoy/Hansen): Moved, seconded, and unanimously passed (4-0): that the Commission go into closed session.

At 7:46 p.m., the Commission went into a closed session. The following individuals remained in the room: Chairperson Gusukuma; Vice Chairperson McCoy; Commissioners Hansen and Lynn; Deputy City Attorney Claire Sylvia; Executive Director John St. Croix; Deputy Executive Director Mabel Ng; Investigator/Legal Analyst Richard Mo; and Assistant Investigator Linda Bjorke. Commissioner Hansen recused herself and left the room.

At 8:14 p.m., the Commission reconvened in open session. Commissioner Hansen returned to the room.

XIII. Discussion and votes regarding closed session action and deliberations.

A. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.



Motion 05-07-11-10 (Lynn/McCoy): Moved, seconded, and unanimously passed (3-0, Commissioner Hansen recused): that the Commission not disclose any discussions held in closed session.

Chairperson Gusukuma stated that Item XI would be moved to the end of the agenda, and announced that she must leave by 9:30 p.m.

VI. Civil Grand Jury Report: The Civil Grand Jury has issued a report on its study of City grants and contracts and requires the Ethics Commission to respond to one of its findings and one recommendation.

Executive Director St. Croix stated that this was the second Civil Grand Jury report that has been referred to the Commission.

Commissioner Hansen stated that she appreciated the report and response.

The Commission engaged in a discussion about the draft response and Commissioner Hansen suggested some amendments.

Public Comment:

Mr. Pilpel inquired if the other letter would be sent to the Civil Grand Jury. Executive Director St. Croix responded in the affirmative.

Motion 05-07-11-11 (Lynn/McCoy): Moved, seconded, and unanimously passed (4-0): that the Commission approve the draft response, with the suggested changes.

VIII. Proposed Legislation 2 (File No. 051035): Supervisor Mirkarimi has introduced legislation that would make payments for electioneering communications made at the behest of a candidate a contribution to that candidate. Further, it would impose contribution limits on the amount of payments that can be given or received for the purposed of making electioneering communications and require certain reports from persons making electioneering communications. The Board of Supervisors has requested comment from the Ethics Commission.

Deputy Director Mabel Ng explained the purpose of the proposed legislation.

The Commission engaged in an extensive discussion of the proposed legislation. Commissioner Lynn stated that contribution limits should be imposed on electioneering communications. Some Commissioners stated that the legislation required additional refinement and clarification. Commissioner Hansen stated that she supported the thrust of the legislation, but the Commission was not in a position to adopt the legislation today. Commissioner Lynn asked the Executive Director if supplemental resources were needed to staff hearings and police the proposed legislation.

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Public Comment:

Mr. Pilpel inquired as to what information the proposed legislation would capture that is not already captured by existing law.

Motion 05-07-11-12 (Lynn/McCov): Moved, seconded, and unanimously passed (4-0): that the Commission continue consideration of this item.

IX. Staff report on possible changes to the investigation process. Commissioners have requested that staff look into changes that can be made to make the investigations process less confidential and to what extent the Commission may release records related to an investigation. After extensive interviews with other jurisdictions and research, staff has produced a report making suggestions for the Commission's consideration.

Chairperson Gusukuma stated that enforcement staff did an excellent job in providing this memorandum and thanked them for their hard work.

Investigator/Legal Analyst Richard Mo explained that enforcement staff created this memorandum in response to concerns and questions raised by various Commissioners. He stated that the memorandum included suggestions for making the investigations and enforcement process more public. He stated that enforcement staff was strongly opposed to removing all of the current confidentiality protections. He noted that staff surveyed several jurisdictions, including the Fair Political Practices Commission, Los Angeles Ethics and Oakland Ethics, and that none of these other jurisdictions utilized a transparent investigations and enforcement process. In fact, most of the other agencies surveyed have processes which are very similar to the Commission's current procedures and regulations.

Mr. Mo stated that it took enforcement staff approximately 208 hours to produce this memo, which amounted to approximately 26 working days. In addition, Deputy Director Ng spent a considerable amount of time working with enforcement staff and editing the memorandum. Mr. Mo stated that consequently, enforcement staff has not been able to work on any investigations since the June meeting. He stated he hoped that this memorandum answered the Commissioners' questions about the investigations and enforcement process and that it would lay to rest any misconceptions or notions that other jurisdictions have a transparent investigations and enforcement process.

Commissioner Lynn complimented enforcement staff on the memorandum. He stated that there were three Ethics Commissions involved: 1) the old Commission that was left behind by the Executive Director; 2) the Commission that we want to become; and 3) the Commission as it is evolving. He stated that the FPPC and Los Angeles were not appropriate benchmarks to measure the Commission against, because those agencies have more staff and attorneys, whereas Commission staff is in a triage mode. He stated that once a complaint is dismissed, the public should be able to comment on it, so as to assist the Commission. He stated that he was surprised that the FPPC uses administrative law judges and that he supported staff suggestions regarding opening up the process.

Commissioner Hansen commended staff on its memorandum. She stated that she was taken aback by the amount of hours it took staff to prepare the report. She stated that the memorandum did not address the Commission's complaint process. She stated that she wanted to remove some of the confidentiality provisions. She stated that she wanted to move forward without staff having to do more work.

Chairperson Gusukuma asked Mr. Mo if enforcement staff could prepare a memorandum showing how each of staff's suggestions could be implemented. Executive Director St. Croix stated that staff would prepare such a report, including any required changes to the regulations, for the August meeting.

Assistant Investigator Linda Bjorke explained that the term "confidentiality" applies to two areas: 1) the investigations process itself; and 2) the information contained in the investigative files, which are much more sensitive. She stated she hoped that the memorandum made this clear and that staff was concerned with protecting the integrity of the investigations and enforcement process.

Public Comment:

Mr. Pilpel stated that he would provide comments to staff. He suggested that staff consider including information regarding SEIs, the number of new complaints, the number of disposed complaints and the aging of complaints.

- X. **Waiver Process Amendments: Whether to amend the waiver provision in the post employment provisions of the Campaign and Governmental Conduct Code (section 3.234(a)(1)(E)) and/or the Ethics Commission regulations implementing it. Possible Amendments include: 1) deleting the ability of former employees and officers to seek waivers; 2) extending the notice period before the Commission may consider a waiver request; and 3) eliminating the ability of the Executive Director to grant waivers in lieu of the Commission.**

Commissioner Hansen stated that she was interested in looking at a staff report regarding the waiver provision amendments. Executive Director St. Croix stated that he would consider this matter for the next meeting.

Public Comment:

Mr. Pilpel stated that he supported the second and third amendments and suggested that the Commission consider holding a special meeting to discuss this item and charge people fees for waiver request hearings.

Motion 05-07-11-13 (Lynn/McCoy): Moved, seconded, and unanimously passed (4-0): that the Commission continue consideration of this item.



XIV. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. The report for this meeting will cover June and July.

Executive Director St. Croix stated that the Commission received budget add-backs from the Board of Supervisors. He stated that the Commission lost a small amount of money because during the proration period for public financing, the Controller's Office put a hold on the Commission's funds. However, the Commission's FY 2005-2006 budget represents a 31% increase over its 2004-2005 budget. He stated that staff would be meeting with the Bureau of Delinquent Revenues next week. Lastly, he thanked the Commission's summer interns for doing an excellent job.

Chairperson Gusukuma and Commissioner Lynn thanked Executive Director St. Croix and Commissioner Hansen for their work on the budget.

Mr. St. Croix announced that the Commission had entered into a settlement agreement with Respondent Jose Medina in Complaint No. 07-050301. Mr. Medina, a candidate for District 11 Supervisor, violated San Francisco Campaign and Governmental Conduct Code Section 1.116, which prohibits a candidate for the Board of Supervisors from having outstanding loans of the candidate's personal funds to the candidate's campaign committee at any time of more than \$15,000. Mr. Medina reported making personal loans to his campaign totaling \$25,000, thereby exceeding the legal limit by \$10,000. Mr. Medina will pay a penalty of \$1,000.

Chairperson Gusukuma left the meeting at 9:25 p.m.

Commissioner Lynn stated that the website's lobbyist page did not list the number of agents of each lobbyist. He stated that the lobbyist reports do not require lobbyists to disclose the source of their funds. He inquired as to when Commission staff last conducted an audit of the campaign consultant filings. He asked staff to provide him with information regarding filing officer reports with regards to SEIs, including the number of reports due, who complied and the non-filers in each department.

Commissioner Hansen inquired as to the amount of the money lost due to the proration period. Executive Director responded that the amount was relatively small and totaled about \$3,000.

Commissioner Hansen inquired about the projected additional staffing. Executive Director St. Croix responded that he would be able to do the following: 1) keep the Assistant Investigator position and change it from a temporary one to a full-time staff member; 2) hire another auditor as a full-time staff member; 3) keep the Campaign Finance Assistant position and change it from a temporary one to a full-time staff member; 4) hire some temporary positions; and 5) possibly hire a part-time IT position. He stated that he would report more on this issue at the August meeting.

Commissioner Lynn inquired why the Executive Director's Report for June listed five new complaints being received but not a corresponding increase in the number of active complaints currently in the Commission's jurisdiction. Investigator/Legal Analyst Mo responded that not every complaint received by the Commission is determined to be within its jurisdiction. Commissioner Lynn stated that he wanted staff to notify the Commission regarding all complaints, regardless of jurisdiction, including the names of respondents. He stated that the Commission's website calendar was not being updated.

Public Comment:

Mr. Pilpel inquired as to the number of people that comprise the \$108,204 outstanding balance of late fines that have been referred to the Bureau of Delinquent Revenues. He stated that the Board of Supervisors could create a law that would allow BDR to recoup its collection costs. He inquired when the non-responsive filers could be put on the agenda. He inquired about the Jose Medina settlement and if the Commission took any action in closed session.

XI. Proposed Campaign Finance Reform Ordinance (CFRO) Regulations. The Commission may continue to take action on regulations discussed at the previous regular monthly meeting. The proposed regulations are Regulations 1.134-1, 1.134-2 and 1.174-1.

A. Regulation 1.174-1

Commissioner Hansen suggested that the regulation require notification to the Board of Supervisors and the public, via the Commission's website.

Public Comment:

Mr. Pilpel stated that paragraph number two needed to be more specific.

Motion 05-07-11-14 (Lynn/Hansen): Moved, seconded, and unanimously passed (3-0): that the Commission approve proposed Regulation 1.174-1, with the words "Board of Supervisors and the public" added to the title; and the words "via a posting on the Commission website and a press release" added to the text of the regulation.

B. Regulations 1.134-1 and 1.134-2

After discussion among the Commissioners regarding these two regulations, Commissioner Lynn moved that the Commission continue consideration of these items to the next meeting.

Public Comment:

Mr. Pilpel stated that the Commission has no authority to require continued reporting, once the voluntary expenditure ceilings are lifted.

Motion 05-07-11-14 (Lynn/Hansen): Moved, seconded, and unanimously passed (3-0): that the Commission continue consideration of proposed Regulations 1.134-1 and 1.134-2 to the next meeting.

XV. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

Commissioner Lynn asked the Executive Director the following: 1) report back regarding the security of files; 2) post requests for advice letters before the Commission acts on them; 3) consider public workshops on the private attorney general provision in the CFRO; 4) consider writing letters to the Board of Supervisors regarding the Commission's review of CFRO and invite their comments; and 5) confer with the Chairperson to discuss a Commission policy for absences and tardiness at Commission meetings.

Commissioner Hansen asked the Executive Director for the following: 1) calendar follow-up to Item III regarding the Hirsch waiver, including a staff report on San Francisco Campaign and Governmental Conduct Code Section 3.224 and San Francisco Charter Section 4.121; 2) continuation of Item X; 3) a report on non-responsive filers; 4) a staff response to the Noe Valley Democratic Club letter from Rafael Mandelman; 5) hold two Commission meetings per month, one for CFRO amendments and the other a regular meeting; 6) hold brown bag lunches to discuss CFRO.

Vice Chairperson McCoy asked the Executive Director to provide a proposed definition for "outstanding fines" under Supervisor Elsbernd's proposed legislation.

Commissioner Hansen inquired as to the dates of the upcoming special meetings. Executive Director St. Croix responded that the meetings were as follows: July 25; August 4; and September 19.

XVI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Mr. Pilpel inquired if the Commission was still planning a retreat. Executive Director St. Croix responded that the retreat was currently scheduled for October 15 but that it might be moved to September.

Mr Pilpel noted that the advice letters were not included in the Executive Director's Report. He inquired if the May 6, 2005 memo from Deputy City Attorney Claire Sylvia was a public document. Vice-Chairperson McCoy responded in the negative.

XVII. Adjournment.

Motion 05-07-11-14 (Hansen/Lynn): Moved, seconded and unanimously passed (3-0): that the Commission adjourn.

The meeting was adjourned at 10:12 p.m.

Respectfully submitted,

Richard Mo
Legal Analyst/Investigator

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Ethics Commission



30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

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**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
THURSDAY, AUGUST 4, 2005, 5:30 P.M.
And AGENDA
Room 416 City Hall**

1 Dr. Carlton B. Goodlett Place, San Francisco

Please note: This is not the Commission's regular hearing room.

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Proposed Legislation (File No. 051033): Supervisor Elsbernd has introduced legislation to disqualify any candidate with outstanding fines or penalties for violations of state or local campaign finance laws from participation in the public finance program. It would also render ineligible for five years candidates found by a court to have knowingly, willfully or intentionally violated state or local campaign finance laws. The Board of Supervisors has requested approval by the Ethics Commission in accordance with Campaign and Governmental Conduct Code section 1.112, which requires amendments to the CFRO to be approved by 4/5 of the Ethics Commission. Draft copies of the legislation and staff's comments are available at the Commission office and on the Commission web site. (Discussion and possible action.)
- IV. Discussion of staff's proposed schedule for consideration of amendments to the Campaign Finance Reform Ordinance (CFRO). The proposed schedule is available at the Commission office and on the Commission website. (Discussion and possible action.)
- V. Proposed Technical Amendments to the Campaign Finance Reform Ordinance. Staff has proposed several technical amendments conforming CFRO to changes in the law, moving the Electronic Filing Ordinance into CFRO, and correcting technical errors. The amendments add a new section 1.103 and amend sections 1.100, 1.104, 1.112, 1.114, 1.118, 1.120, 1.128, 1.130, 1.134, 1.144, 1.152, and 1.170. The draft amendments and a staff report are available at the Commission office and on the Commission web site. (Discussion and possible action.)
- VI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- VII. Adjournment.

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Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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SF Ethics Commission

TEXT ONLY:



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TEXT SIZE:



August 4, 2005

(Approved 09/19/05)

Minutes of the Special Meeting of the
San Francisco Ethics Commission
City Hall, One Dr. Carlton B. Goodlett Place, Room 416
August 4, 2005

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I. Call to order and roll call.

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Chairperson Gusukuma called the meeting to order at 5:40 p.m.

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COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Waukeen McCoy, Vice-Chairperson; Joe Lynn, Commissioner; and Michele Anglade, Commissioner (arrived 6:10 p.m.) Excused: Eileen Hansen, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Supervisor Sean Elsbernd; Anita Mayo, Pillsbury Winthrop; David Pilpel, Bob Planthold, and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting and available to public at the meeting:

Memo from Executive Director re: Proposed Amendments to CFRO Section 1.140,

July 29, 2005

Proposed Timetable for Consideration of CFRO Amendments

Memo from Executive Director re: Technical Amendments to CFRO, July 29, 2005

Draft Proposed Technical Amendments to CFRO, July 29, 2005

E-mail from Commissioner Joe Lynn re: Additional Proposals for CFRO

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

- **Discussion of staff's proposed schedule for consideration of amendments to the Campaign Finance Reform Ordinance (CFRO). This item was taken out of order because the Commission could not act on Item III without at least 4 Commissioners.**

Deputy Executive Director Mabel Ng explained that Commission staff had proposed a timetable for the consideration of CFRO amendments. The timetable would occur over the next several months. Under the timetable, proposals would be discussed at an initial meeting but not voted on by the Commission until the following meeting. Staff requested that if any Commissioner has a proposal related to any of the topics, that he or she submit such proposal to staff at least one week prior to the meeting at which the topic will be discussed. The timetable allows Commissioners to submit proposals on topics not covered by the proposed timetable at the December 12, 2005 meeting, and Commissioners should submit such proposals by December 5, 2005 .

Executive Director St. Croix stated that the proposed timetable is not an exhaustive list. Commissioners may draft their own amendments to bring to the appropriate meeting, so long as they submit the proposal one week prior to the meeting.

Commissioner Lynn stated that he wanted to ensure that his memo regarding CFRO amendments was included in the timetable. He stated that he thought the Commission would be giving small filers/clubs priority and he did not see them included among the topics listed for the August meetings. He stated that the Commission needed to deal with the nonfilers problem. He stated that the Commission's expedited enforcement program was created one year ago. He stated that four years ago, he suggested that the Commission follow the Los Angeles program. He stated that the Commission staff needed to review this issue.

Executive Director St. Croix stated that he has been discussing the issues of small filers/clubs and nonfilers at the staff level.

Commissioner Lynn stated that the CFRO discussion should not be limited to the law but also include the regulations. In response to his questions regarding the legislative history of CFRO Section 1.134, Deputy Director Ng stated that it was amended recently when the Commission approved and the Board adopted amendments related to electioneering communications.

The Executive Director stated that the timetable was a work in progress and for informational purposes only.

- **Proposed Legislation (File No. 051033): Supervisor Elsbernd has introduced legislation to disqualify any candidate with outstanding fines or penalties for violations of state or**

local campaign finance laws from participation in the public finance program. It would also render ineligible for five years candidates found by a court to have knowingly, willfully or intentionally violated state or local campaign finance laws. The Board of Supervisors has requested approval by the Ethics Commission in accordance with Campaign and Governmental Conduct Code section 1.112, which requires amendments to the CFRO to be approved by 4/5 of the Ethics Commission.

Supervisor Elsbernd stated that he could only stay for a few minutes because he had another engagement to attend. He stated that if necessary the Commission could continue consideration of this item until its next meeting. The Commissioners had no questions regarding the proposed legislation.

Public Comment:

Anita Mayo, Pillsbury Winthrop, stated that proposed CFRO Section 1.140(a)(7-8) referred to outstanding "forms," but the reality is that committees and candidates deal with "statements, reports or forms." Thus, she suggested amending the proposal to include "statements, reports or forms."

David Pilpel stated that because there may be other fines due to the Department of Elections or the FPPC, these fines should be referenced in the legislation by adding wording to the effect of "fines imposed by the Ethics Commission." He stated that the legislation did not reference the Sunshine Ordinance Declaration. He also stated that anyone with any outstanding fines should not be eligible for public financing.

Motion 05-08-04-1 (Lynn/McCoy): Moved, seconded and unanimously passed (4-0): that the Commission adopt the proposed legislation, as amended with the inclusion of "outstanding statements, reports or forms" on page 2.

- V. Proposed Technical Amendments to the Campaign Finance Reform Ordinance.** Staff has proposed several technical amendments conforming CFRO to changes in the law, moving the Electronic Filing Ordinance into CFRO, and correcting technical errors. The amendments add a new section 1.103 and amend sections 1.100, 1.104, 1.112, 1.114, 1.118, 1.120, 1.128, 1.130, 1.134, 1.144, 1.152, and 1.170.

Executive Director St. Croix suggested that the Commission review all 13 amendments and then take comment afterwards.

Deputy Executive Director Ng stated that most of the amendments refer to changes which have already been made into law.

Commissioner McCoy inquired if some of the amendments had been discussed at prior Commission meetings. Ms. Ng responded in the affirmative.

Commissioner Lynn inquired if the Board of Supervisors would receive this item if the Commission decided to pass it at tonight's meeting. Ms. Ng responded in the affirmative and stated that staff

recommended waiting until the regular August meeting, so as to avoid piecemeal forwarding of amendments to the Board.

Commissioner Lynn stated that he preferred that these amendments be forwarded to the Board tonight. Executive Director St. Croix stated that the Commission could do so, if it passed the amendments at tonight's meeting.

Commissioner Anglade stated that she was concerned about giving the Board too large of a package of amendments. Deputy Executive Director Ng stated that because the regular August meeting dealt only with statute of limitations issues, there would be no controversy because those amendments followed the Political Reform Act.

Public Comment:

Ms. Mayo stated that the Electronic Filing Ordinance left out two definitions. Deputy City Attorney Chad Jacobs explained that those terms were already included in the CFRO by incorporation.

Motion 05-08-04-2 (McCoy/Lynn): Moved, seconded and unanimously passed (4-0): that the Commission adopt the proposed amendments.

VI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

VII. Adjournment.

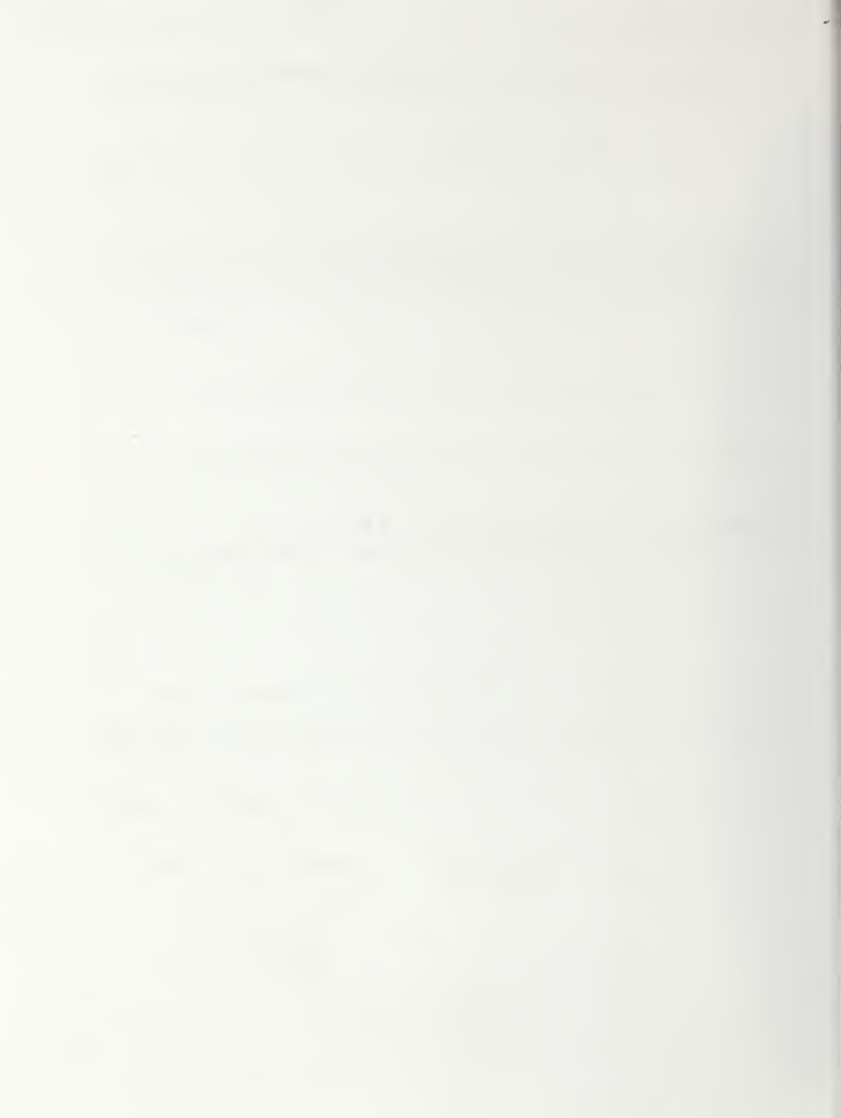
Motion 05-08-04-XX (Lynn/McCoy): Moved, seconded and unanimously passed (4-0): that the Commission adjourn.

The meeting was adjourned at 6:10 p.m.

Respectfully submitted,

Richard Mo

Legal Analyst/Investigator



SF Ethics Commission

TEXT ONLY:



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August 8, 2005

30 Van Ness Ave., Suite 3900

San Francisco, CA 94102

Phone 581-2300 Fax 581-2317

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JUN 20 2008

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SAN FRANCISCO ETHICS COMMISSION NOTICE OF REGULAR MEETING

August 8, 2005, 5:30 P.M.

and AGENDA

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

I. Call to order and roll call.

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

III. Proposed Legislation 1 (File No. 051151): Supervisor Peskin has introduced legislation to apply the City's conflict of interest laws to the Landmarks Preservation Advisory Board. Conflict of interest laws apply to City "officers and employees" which does not generally include persons serving on advisory bodies. The Landmarks panel appears to have more than a simply advisory capacity, and this legislation extends the conflict of interest provisions to them. Staff further recommends extending the legislation to ALL advisory bodies that must file Statements of Economic Interests. This legislation has been referred to the Ethics Commission for comment and approval in accordance with C&GC § 3.204, which requires amendments to the City's Conflict of Interest laws to be approved by 4/5 of the Ethics

Commission. A staff report is available at the Commission office and on the Commission web site. (Discussion and possible action.)

- IV.** Proposed Legislation 2 (File No. 051035): Supervisor Mirkarimi has introduced legislation that would amend CFRO to make payments for electioneering communications made at the behest of a candidate a contribution to that candidate. Further, it would impose contribution limits on the amount of payments that can be given or received for the purposed of making electioneering communications and require certain reports from persons making electioneering communications. The Board of Supervisors has requested comment and approval from the Ethics Commission in accordance with C&GC Code § 1.112, which requires amendments to the CFRO to be approve by 4/5 of the Ethics Commission. Staff has prepared a report on the legislation. A draft copy is available at the Commission office and on the Commission web site. (Discussion and possible action).
- V.** Statutes of Limitations: The Campaign Finance Reform Ordinance does not expressly provide for a statute of limitations period for any actions other than civil actions. Current Commission policy is to follow limitation periods set in the Political Reform Act. The Commission will consider an amendment to CFRO that will incorporate the PRA language directly into the CFRO. A staff memo and draft language are available in the Commission office and on the Commission web site. (Discussion and possible action.)
- VI.** Waiver Process Amendments: Whether to amend the waiver provision in the post employment and compensated advocacy provisions of the Campaign and Governmental Conduct Code and/or the Ethics Commission regulations implementing them. Possible amendments include: 1) deleting the ability of current or former employees and officers to seek waivers; 2) extending the notice period before the Commission may consider a waiver request; and 3) eliminating the ability of the Executive Director to grant waivers in lieu of the Commission. A staff report on these amendments is available in the Commission office and on the Commission web site. (Discussion and possible action.)
- VII.** Staff report on possible changes to the investigation process: At a previous meeting, staff produced a report making suggestions for the Commission's consideration on changes that would make the Commission's investigation process more open to the public. Staff has produced a memo detailing how those suggestions could be carried out. The memo is available at the Commission office and on the Commission web site. (Discussion and possible action.)
- VIII.** Proposed Campaign Finance Reform Ordinance (CFRO) Regulations. The Commission may continue to take action on Regulations 1.134-1 and 1.134-2, which codify the names of the forms used to implement Section 1.134 and the language in law stating that a person need not

file the forms after spending caps have been lifted in individual races. A memo on these regulations is available at the Commission office and on the Commission web site. (Discussion and possible action.)

- IX. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)

- X. Closed session. (Discussion and possible action.)

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

- XI. Discussion and votes regarding closed session action and deliberations. (Discussion and possible action.)

A. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.

- XII. Minutes of the regular Commission meeting of July 11, 2005. (Discussion and possible action.)

- XIII. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the

Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

XIV. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XV. Adjournment.

Know Your Rights Under the Sunshine Ordinance

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Minutes of the Regular Meeting of the
San Francisco Ethics Commission
City Hall, One Dr. Carlton B. Goodlett Place, Room 408
August 8, 2005

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I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 5:43 p.m.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Waukeen McCoy, Vice-Chairperson; Joe Lynn, Commissioner; Eileen Hansen, Commissioner; and Michele Anglade, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator; Linda Bjorke, Assistant Investigator.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Anita Mayo, Pillsbury Winthrop; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting and available to public at the meeting:

Memo from Executive Director John St. Croix re: Proposed Amendment to Add Section 3.203 of the S.F. Campaign and Governmental Conduct Code, August 1, 2005

Memo from Executive Director John St. Croix re: Proposed Amendments to Electioneering Communications, July 6, 2005

Legislative Digest re: Amendments to Electioneering Communications Ordinance

Memo from Executive Director John St. Croix re: Proposed Amendments to CFRO Regarding Statute of Limitations, August 3, 2005

Memo from Executive Director John St. Croix re: Waiver Process Amendments and Exemptions, August 8, 2005

Memo from Executive Director John St. Croix re: Possible Changes to Investigations/Enforcement Regulations, August 4, 2005

San Francisco Ethics Commission Enforcement Regulations, Section XIII

Draft Ethics Commission Regulations Implementing the CFRO

Executive Director's Report for the Meeting of August 8, 2005

Draft Minutes of the Regular Meeting of July 11, 2005

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

III. Proposed Legislation 1 (File No. 051151): Supervisor Peskin has introduced legislation to apply the City's conflict of interest laws to the Landmarks Preservation Advisory Board. Conflict of interest laws apply to City "officers and employees" which does not generally include persons serving on advisory bodies. The Landmarks panel appears to have more than a simply advisory capacity, and this legislation extends the conflict of interest provisions to them. Staff further recommends extending the legislation to ALL advisory bodies that must file Statements of Economic Interests. This legislation has been referred to the Ethics Commission for comment and approval in accordance with C&GC § 3.204, which requires amendments to the City's Conflict of Interest laws to be approved by 4/5 of the Ethics Commission.

Executive Director John St. Croix stated that the purpose of Supervisor Peskin's proposed amendment is to extend the City's conflict of interest laws to advisory bodies, such as the Landmarks Preservation Advisory Body ("LPAB.")

Commissioner Lynn inquired if members of the LPAB were invited to tonight's meeting. Executive Director responded in the negative.

Commissioner Lynn inquired if the conflicts of interest laws applied to the Treasure Island Development Authority ("TIDA"), the Port Commission or other quasi-City agencies. Deputy City Attorney Claire Sylvia responded that the conflict of interest laws only apply to City officers, so the Port Commission is covered but TIDA is not.

Commissioner Lynn inquired if the Commission could extend the conflicts laws to TIDA. Ms. Sylvia responded that she would need to research that matter.

Commissioner Hansen stated that she supported the legislation for purposes of discussion and she wanted to extend the conflicts laws to all advisory bodies that file Statements of Economic Interests.

Public Comment:

None.

Motion 05-08-08-1 (Hansen/Anglade): Moved, seconded and unanimously passed (5-0): that the Commission support the proposed legislation.

IV. Proposed Legislation 2 (File No. 051035): Supervisor Mirkarimi has introduced legislation that would amend CFRO to make payments for electioneering communications made at the behest of a candidate a contribution to that candidate. Further, it would impose contribution limits on the amount of payments that can be given or received for the purpose of making electioneering communications and require certain reports from persons making electioneering communications. The Board of Supervisors has requested comment and approval from the Ethics Commission in accordance with C&GC Code § 1.112, which requires amendments to the CFRO to be approved by 4/5 of the Ethics Commission.

Executive Director St. Croix stated that the Commission had previously discussed this legislation. He stated that he had invited Supervisor Mirkarimi to tonight's meeting but did not know if he could attend.

Commissioner Lynn inquired if staff was satisfied that the legislative record was sufficient to support the \$500 spending limit proposed by the legislation. Executive Director St. Croix responded that the \$500 limit was consistent with both State and federal limits. Deputy Director Mabel Ng stated that staff believes that the proposed limit had merits but that there were unresolved constitutional issues regarding the \$500 contribution limit.

Commissioner Lynn inquired if there was anything that staff could do to shore up support for this provision. Ms. Ng responded that staff would need to analyze more data.

Commissioner Lynn stated that he had asked staff for information regarding a proposed budget for hearings and a quantification of staff time/resources that would be required to hold these hearings. Executive Director St. Croix responded that it would be difficult to provide such estimates, because it would depend on the number of candidates.

Commissioner Lynn stated that the amount of staff time needed would be equivalent to the staff time spent four years ago. Chairperson Gusukuma asked for clarification. Commissioner Lynn stated that the Commission needed to hold legislative hearings and he wanted staff to propose a budget for this purpose. He stated that he believed that the legislative record is sufficient. He requested that staff prepare an estimate and a timetable for these legislative hearings. He stated that this was the last area of unregulated campaign finance.

Commissioner Hansen stated that she wanted legislative hearings regarding electioneering communications, as well as more information from staff. She inquired if the Commission would require a supplemental budget and stated that the Commission needed to know the presumed costs of holding these hearings. She inquired as to why staff was not in a position to recommend this legislation.

Executive Director St. Croix responded that the Board of Supervisors would react with incredulity if the Commission requested another supplemental budget, because the Board recently increased the Commission's budget by over thirty percent. He stated that the Board would only seriously consider a supplemental request if there was an emergency.

Deputy Director Ng responded that the electioneering communications legislation was enacted in April 2005 and that there was insufficient information for staff to analyze.

Commissioner Hansen stated that the Commission must have these hearings to involve the public, so that there would be support if the Commission requested a supplemental budget.

Commissioner Lynn stated that a lot of data already existed. He asked staff to consider holding hearings and inquired if the Commission had the resources for this purpose. He stated that the Commission should handle these hearings. He moved that the Commission continue this item to the next meeting.

Commissioner Hansen stated that she wanted to hear from staff regarding the constitutionality of the \$500 contribution limit.

Executive Director St. Croix responded that staff would propose a process for considering Commissioner Lynn's and Commissioner Hansen's requests.

Commissioner McCoy inquired if there were time constraints on this legislation. Ms. Ng replied in the negative.

Commissioner Anglade stated that she supported the legislation as written. She inquired as to how many public hearings would be held. Executive Director St. Croix responded that one hearing would probably be sufficient.

Commissioner McCoy inquired if Supervisor Mirkarimi could attend the hearings. Executive Director St. Croix responded that he would invite Supervisor Mirkarimi to the hearings.

Public Comment:

Anita Mayo, Pillsbury Winthrop, stated that political speech is protected and that expenditure limits are subject to a strict scrutiny test whereby the regulation must be narrowly-tailored to serve a compelling government interest. She stated that the proposed contribution limit was a direct limitation on freedom of expression and that there was no compelling governmental interest, such as the prevention of corruption, advanced by the proposed contribution limit. She urged the Commission to reject the limit. She referenced a 2002 Ninth Circuit case where the Court applied strict scrutiny and reversed a city regulation that placed a limit on contributions and expenditures.

Motion 05-08-08-2 (Anglade/McCoy): Moved, seconded and unanimously passed (5-0): that staff prepare a memo regarding holding a hearing and that the Executive Director invite Supervisor Mirkarmi to the hearing.

- V. **Statutes of Limitations:** The Campaign Finance Reform Ordinance does not expressly provide for a statute of limitations period for any actions other than civil actions. Current Commission policy is to follow limitation periods set in the Political Reform Act. The Commission will consider an amendment to CFRO that will incorporate the PRA language directly into the CFRO.

Executive Director St. Croix explained that other than for civil actions, the CFRO and the SF C&GCC do not expressly state statute of limitations periods. Consequently, confusion has arisen over which statute of limitations apply. Because the CFRO incorporates the Political Reform Act, staff believes that the statutes of limitations set forth in the PRA apply. Staff also believes that explicitly setting out the statutes of limitations in the CFRO itself would help clarify this issue. As such, staff proposes that the Commission amend section 1.168(b) relating to civil actions and adopt a new subsection (c) to set forth the statute of limitations periods for criminal, civil, administrative and collection actions. The time periods specified in the new subsection follow the time periods specified in the PRA.

Commissioner Hansen stated that following the PRA statutes of limitations made sense.

Public Comment:

None.

Motion 05-08-08-3 (Anglade/McCoy): Moved, seconded and unanimously passed (5-0): that the Commission approve proposed amendments to the Campaign Finance Reform Ordinance related to the statutes of limitations. These amendments, along with technical amendments adopted at the August 4, 2005 special meeting, will be forwarded to the Board of Supervisors.

- VI. **Waiver Process Amendments:** Whether to amend the waiver provision in the post employment and compensated advocacy provisions of the Campaign and Governmental Conduct Code and/or the Ethics Commission regulations implementing them. Possible amendments include: 1) deleting the ability of current or former employees and officers to seek waivers; 2) extending the notice period before the Commission may consider a waiver request; and 3) eliminating the ability of the Executive Director to grant waivers in lieu of the Commission.

Commissioner Hansen stated that the Executive Director's memo did not address the specific history of the waiver provision and that she needed more specific information. Specifically, she wanted to know if the exemption process made more sense than then waiver process. She proposed that the Commission continue amendment #1 and approve amendments #2 and #3.

Deputy City Attorney Claire Sylvia responded that the City Attorney had previously provided to the Commission a memo regarding the history of the waiver process.

Commissioner McCoy stated that the waiver process worked fine and that the Commission should not eliminate it. Chairperson Gusukuma and Commissioner Anglade agreed with Commissioner McCoy. Commissioner Anglade stated that the waiver process worked fine and that the problem was how the Commission has been inconsistent in handling waiver requests.

Commissioner Lynn stated that exemptions were needed and that the Commission was in the process of determining what works. He stated that the public perception was that the Commission routinely grants waiver requests. He stated that the Commission has been consistent in its handling of waiver requests.

Chairperson Gusukuma stated that Commissioners McCoy and Anglade did not think that the waiver process should be changed.

Commissioner Lynn stated that staff could provide a memo on which waivers have been granted and maybe that should be the law. Ms. Sylvia stated that the Commission had already been provided with such a memo and that there was no need for another staff memo. Commissioner Anglade stated that she agreed with Ms. Sylvia.

Commissioner Anglade stated that the Executive Director should maintain the ability to grant waivers because the Commission could still overturn the Executive Director's decision during the following two meetings. Executive Director stated that nevertheless as a practical matter, he agreed with Commissioner Anglade, he preferred that the Commission remove his ability to grant waivers.

Commissioner McCoy stated that had not heard any public sentiment that the Commission routinely grants waivers. He stated that he did not want the employee to be held in limbo. Chairperson Gusukuma stated that she agreed with Commissioner McCoy. She stated that allowing the Executive Director to grant waivers does not mean that the Commission does not consider waiver requests seriously.

Commissioner Lynn stated that the Commission might want to consider referring this matter to the Markkula Center for Applied Ethics at Santa Clara University.

The Commissioners discussed the prior memo on waivers, whether staff should prepare a report on past waiver actions, whether to expand the discussion and obtain more public comment and whether the Commission needed more information regarding whether it should eliminate the waiver process.

Public Comment:

None.

Table 1: Summary of Data	
Category	Value
Item 1	100
Item 2	200
Item 3	300
Item 4	400
Item 5	500
Item 6	600
Item 7	700
Item 8	800
Item 9	900
Item 10	1000
Item 11	1100
Item 12	1200
Item 13	1300
Item 14	1400
Item 15	1500
Item 16	1600
Item 17	1700
Item 18	1800
Item 19	1900
Item 20	2000
Item 21	2100
Item 22	2200
Item 23	2300
Item 24	2400
Item 25	2500
Item 26	2600
Item 27	2700
Item 28	2800
Item 29	2900
Item 30	3000
Item 31	3100
Item 32	3200
Item 33	3300
Item 34	3400
Item 35	3500
Item 36	3600
Item 37	3700
Item 38	3800
Item 39	3900
Item 40	4000
Item 41	4100
Item 42	4200
Item 43	4300
Item 44	4400
Item 45	4500
Item 46	4600
Item 47	4700
Item 48	4800
Item 49	4900
Item 50	5000
Item 51	5100
Item 52	5200
Item 53	5300
Item 54	5400
Item 55	5500
Item 56	5600
Item 57	5700
Item 58	5800
Item 59	5900
Item 60	6000
Item 61	6100
Item 62	6200
Item 63	6300
Item 64	6400
Item 65	6500
Item 66	6600
Item 67	6700
Item 68	6800
Item 69	6900
Item 70	7000
Item 71	7100
Item 72	7200
Item 73	7300
Item 74	7400
Item 75	7500
Item 76	7600
Item 77	7700
Item 78	7800
Item 79	7900
Item 80	8000
Item 81	8100
Item 82	8200
Item 83	8300
Item 84	8400
Item 85	8500
Item 86	8600
Item 87	8700
Item 88	8800
Item 89	8900
Item 90	9000
Item 91	9100
Item 92	9200
Item 93	9300
Item 94	9400
Item 95	9500
Item 96	9600
Item 97	9700
Item 98	9800
Item 99	9900
Item 100	10000

Motion 05-08-08-4 (McCoy/Hansen): Moved, seconded and passed (4-1, Chairperson Gusukuma dissenting): that the Commission approve amendments to Regulation 3.234-4(a)(3), 3.224-2(b) and 2-234-4(b) to require two calendar weeks' notice for the Commission to consider requests for waivers from the compensated advocacy and post employment restrictions; and to Regulations 3.224-2(c) and 3.234-4(c) to eliminate the authority of the Executive Director to consider waiver requests.

Motion 05-08-08-5 (Hansen/Lynn): Moved, seconded and not passed (2-3, Commissioners Gusukuma, Anglade and McCoy dissenting): that the Commission continue the third proposed amendment to the next meeting, that staff provide the Commission with more information and that the Commission expand the discussion for further public comment and education.

Commissioner Hansen inquired if she could offer another motion to calendar a discussion regarding how to educate the public regarding the waiver process. Executive Director St. Croix responded that her motion was not germane to the agenda item and that she could bring it up during Item XIII.

VII. Staff report on possible changes to the investigation process: At a previous meeting, staff produced a report making suggestions for the Commission's consideration on changes that would make the Commission's investigation process more open to the public.

Investigator/Legal Analyst Richard Mo stated that during its regular meeting of July 11, 2005, enforcement staff presented the Commission a memorandum regarding the confidentiality of the investigations and enforcement process. Included in the memorandum were various suggestions as to how the Commission could make its investigations/enforcement process more transparent. The Commission requested that enforcement staff provide another memorandum as to how these suggestions could be implemented.

Executive Director St. Croix explained that suggestions 1, 3 and 5 could be implemented without changing any regulations. However, suggestions 2 and 6 required that the Commission amend its Enforcement Regulations. For suggestion 4, he asked that the Commissioners provide direct feedback to him, via email, regarding the establishment of settlement guidelines.

Commissioner Lynn inquired if other public agencies had settlement guidelines. Assistant Investigator Linda Bjorke responded that the New York City Campaign Finance Board has guidelines but that agency focused exclusively on public financing issues.

the first 10 years of the 21st century. The authors argue that the current business environment is characterized by rapid technological change, globalization, and a focus on customer satisfaction. They suggest that management education must adapt to these changes by focusing on developing students' critical thinking, problem-solving, and communication skills. The authors also discuss the importance of ethics and social responsibility in management education.

The authors propose a framework for management education that emphasizes the development of students' skills and knowledge in a way that is relevant to the current business environment. They suggest that management education should be interdisciplinary and should draw on insights from a variety of fields, including psychology, sociology, and economics. They also argue that management education should be experiential and should provide students with opportunities to apply their knowledge in real-world settings.

The authors conclude by discussing the challenges of management education in the 21st century. They argue that management education must continue to evolve in order to meet the needs of the current business environment. They suggest that management education should focus on developing students' skills and knowledge in a way that is relevant to the current business environment, and that it should provide students with opportunities to apply their knowledge in real-world settings.

The authors also discuss the importance of ethics and social responsibility in management education. They argue that management education should provide students with opportunities to learn about and practice ethical and socially responsible behavior. They suggest that management education should focus on developing students' skills and knowledge in a way that is relevant to the current business environment, and that it should provide students with opportunities to apply their knowledge in real-world settings.

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Commissioner Lynn stated that creating guidelines would take up a lot of time. Executive Director St. Croix responded that the proposed guidelines were not meant to be exhaustive and that perhaps this was an unsolvable problem.

Commissioner McCoy stated that at one time, the Commission gave enforcement staff a high and a low settlement goal.

Commissioner Lynn stated that the Commission could hold status conferences, similar to how courts hold status conferences, to set up a communication procedure between enforcement staff and the Commission. He stated that it was important to publicize the guidelines because of their precedential value and to inform the public that the Commission treats all political players equally. He also requested that the online audit reports list the date on which they were issued.

Public Comment:

None.

Motion 05-08-08-6 (Lynn/McCoy): Moved, seconded and unanimously passed (5-0): that the Commission approve amendments to the Commission's Regulations for Investigations and Enforcement Proceedings to state explicitly that the Executive Director may provide a public summary of dismissed complaints, provided that such summary shall comply with the confidentiality requirements of the Charter; and to set forth explicitly the requirements and procedures by which the Commission approves settlements.

The Commission went into recess at 7:20 p.m. At 7:28 p.m., the Commission reconvened.

VIII. Proposed Campaign Finance Reform Ordinance (CFRO) Regulations. The Commission may continue to take action on Regulations 1.134-1 and 1.134-2, which codify the names of the forms used to implement Section 1.134 and the language in law stating that a person need not file the forms after spending caps have been lifted in individual races.

Deputy Executive Director Ng explained that Regulation 1.134-1 does the following: 1) codifies the name of the form used to implement section 1.134(b); and 2) codifies the Commission's position that a candidate need to file this form if the Commission has already lifted the applicable voluntary expenditure ceiling. She explained that Regulation 1.134-2 does the same with respect to section 1.134(c).

Public Comment:

None.

Motion 05-08-08-7 (Anglade/McCoy): Moved, seconded and unanimously passed (5-0): that the Commission approve Regulations 1.134-1 and 1.134-2 related to forms used to notify the Ethics Commission when a candidate or committee has made \$5,000 in expenditures.

IX. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting.

Executive Director St. Croix announced that the Commission had entered into a settlement agreement with Rose Tsai regarding Complaint Number 08-050301.

Mr. St. Croix stated that the Mayor signed the FY 2005-2006 budget on Thursday, August 4, 2005. He stated that he would be hiring the following: 1) a campaign finance assistant; 2) an auditor; 3) an assistant investigator; 4) a part-time IT employee; and 5) temporary help. He stated that he would forward to the Board of Supervisors both the CFRO technical amendments and the statute of limitations amendments.

Mr. St. Croix stated that he had a productive discussion with Rafael Mandelman of the Noe Valley Democratic Club and that he would meet with representatives/treasurers of all the small clubs. He stated that staff would begin exploring possible legislation regarding non-filers and past due reports. Regarding statements of economic interests, Mr. St. Croix stated that staff would post online a list of agencies which have not yet filed filing officer reports. Staff is creating a process to get these individuals/groups to file; some are non-City entities and will be referred to the FPPC.

Commissioner Lynn stated that there ought to be caps on e-filing fines. He suggested that staff maintain a contact list for all the small filers. He also suggested that staff form a citizens advisory committee because staff institutionally talks with political attorneys but not with grass roots activists. With regards to lobbyists, he mentioned an article in the San Francisco Chronicle and stated that filers are concerned about increased vigilance by Commission staff. With regards to the budget, he stated that staff only obtained 2.5 new positions and had originally request 5 new positions, so the Commission was still in a triage mode and must let officials know that the Commission still needs additional funding. He stated that an August 3, 2005 press release by the Mayor's Office proposed that the Building Inspection Commission receive funding for 33 new staff and that the Ethics Commission needs to be at the table. With regards to Item 4.a., he stated that past practice was to send courtesy notices to all committees. With regards to Item 4.c., he asked how much money had been collected in the current fiscal year. Lastly, he stated that the five-month plan looked thin.

Commissioner Hansen requested fuller budget information and how the funds break down. She stated that it would be helpful to have a brief reports about the special meetings at the next regular meeting. With regard to Item 4, she stated that she wanted to continue to notify people by paper. She inquired if staff had met with the Bureau of Delinquent Revenues and stated that she was concerned at how slowly BDR moves. She requested that the lobbyist program be calendared at some point for assessment.

The Executive Director noted the Commission's calendar for the remainder of the year: September 12 – regular meeting; September 19 – special meeting; October 15 – retreat from 10:00 a.m. to 2:00 p.m.; October 17 – regular meeting, delayed because October 12 is Columbus Day, a legal holiday; November 14 – regular meeting; and December 19 – regular meeting, delayed one week because of staff's participation in the annual COGEL conference.

Public Comment:

None.

X. Closed session.

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 1

Motion 05-08-08-8 (Lynn/McCoy): Moved, seconded, and unanimously passed (5-0): that the Commission go into closed session.

At 7:59 p.m., the Commission went into a closed session. The following individuals remained in the room: Chairperson Gusukuma; Vice Chairperson McCoy; Commissioners Anglade, Hansen and Lynn; Deputy City Attorney Claire Sylvia; Executive Director John St. Croix; Deputy Executive Director Mabel Ng; Investigator/Legal Analyst Richard Mo; and Assistant Investigator Linda Bjorke.

At 8:20 p.m., the Commission reconvened in open session.

XI. Discussion and votes regarding closed session action and deliberations.

A. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.

Motion 05-08-08-9 (McCoy/Anglade): Moved, seconded, and unanimously passed (5-0): that the Commission not disclose any discussions held in closed session.

Public Comment:

None.

XII. Minutes of the regular Commission meeting of July 11, 2005.

Commissioner Lynn requested that the first paragraph on page 15 be amended to reflect his comments and that staff delete the phrase "in the public room."

Commissioner Hansen thanked Mr. Mo for preparing the minutes and stated that they were very thorough and comprehensive.

Public Comment:

None.

Motion 05-08-08-10 (McCoy/Lynn): Moved, seconded, and passed (5-0): that the Commission approve the minutes of the regular meeting of July 11, 2005, with the suggested changes.

XIII. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

Commissioner Anglade requested that staff prepare a report on the nonfilers within the next three months.

Commissioner Lynn stated the following: 1) the Lobbyist Ordinance should require lobbyists to disclose the true source of funds for their payments and the staff should conduct workshops on how to read lobbyist reports; 2) the Controller's partial report of the Commission's budget compared to other ethics agencies was woefully inadequate because Oakland has no filing officer duties; 3) the Commission should extend the endorsement ban to include the District Attorney's Office; 4) the Commission should declare that the City Attorney has a conflict of interest when dealing with campaign contributions; 5) staff should prepare a status report on the streamlined enforcement program; 6) the Commission should extend the conflict of interest regulations to the Treasure Island Development Authority; 7) the Commission should review Section 1.106 and its applicability to state committees; and 8) poor communities do not vote because they have no confidence in the ethics of government.



Commissioner Hansen asked that the Executive Director do the following: 1) include more information in the complaint log regarding the status of the complaint; 2) increase public input at Commission meetings, including holding two meetings per month, holding brown bag session and holding meetings on specific topics; and 3) follow-up regarding the waiver discussion and how to educate the public about the waiver process.

Public Comment:

None.

XIV. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

XV. Adjournment.

Motion 05-08-08-11 (McCoy/Anglade): Moved, seconded and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 8:34 p.m.

Respectfully submitted,

Richard Mo
Legal Analyst/Investigator

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**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING
September 12, 2005, 5:30 P.M.
and AGENDA**

DOCUMENTS DEPT.

SEP - 8 2005

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PUBLIC LIBRARY

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Request for waiver from Campaign and Governmental Code section 3.224 (compensated advocacy ban). Patrick Buscovich, a structural engineer who seeks reappointment to the Unreinforced Masonry Building Appeals Board ("UMBAB"), has requested a waiver that would allow him to represent private parties before other City officers and employees as part of his duties as a structural engineer while serving on the UMBAB. A staff report is available at the office and on the Commission web site. (Discussion and possible action.)
- IV. Request for waiver from Campaign and Governmental Code section 3.224 (compensated advocacy ban). Arnie Lerner, who serves on the Access Appeals Board ("AAB"), has requested a waiver that would allow him to represent private parties before other City officers and employees as part of his duties as a licensed architect while continuing to serve on the AAB. A staff report is available at the office and on the Commission web site. (Discussion and possible action.)
- V. Possible Amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing: (1) contribution limits; (2) use of campaign funds; and (3) voluntary expenditure limits. At this meeting, the Commission will discuss and take public comment on various options and ideas. The Commission will not vote on particular changes at the September 12 meeting. Any specific proposals will be presented to the Commission at the September 19 special meeting for possible action. A staff memo will be available in the Commission office and on the Commission web site. (Discussion.)
- VI. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)
- VII. Closed session. (Discussion and possible action.)

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 27

VIII. Discussion and votes regarding closed session action and deliberations. (Discussion and possible action.)

A. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.

IX. Minutes of the regular Commission meeting of August 8, 2005. (Discussion and possible action.)

X. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XII. Adjournment.

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Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Adele Destro by mail to Interim Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotf@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Destro or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>. The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals. Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317 and web site www.sfgov.org/ethics

SF Ethics Commission

TEXT ONLY:



PRINT:



TEXT SIZE:



September 12, 2005

(Approved 10/17/05)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

September 12, 2005

DOCUMENTS DEPT.

I. Call to order and roll call.

JUN 20 2008

Vice-Chairperson McCoy called the meeting to order at 5:38 p.m.

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COMMISSION MEMBERS PRESENT: Waukeen McCoy, Vice-Chairperson; Joe Lynn, Commissioner; Eileen Hansen, Commissioner; and Michele Anglade, Commissioner. Excused: Emi Gusukuma, Chairperson.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator; Linda Bjorke, Assistant Investigator.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Anita Mayo, Pillsbury Winthrop; Bruce Bonacker, San Francisco Small Business Network; Arnie Lerner, Access Appeals Board; Michael Hamman, National Association of Remodeling Industry; Patrick Buscovich, Kristian Ongoco, Charles Marsteller, David Pilpel, and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting and available to public at the meeting:

Memo from Executive Director John St. Croix re: Request from Prospective Member of Unreinforced Masonry Building Appeals Board for Waiver from S.F. Campaign and Governmental Conduct Code Section 3.224, September 7, 2005

Memo from Executive Director John St. Croix re: Request from Member of Access Appeals Commission

for Waiver from S.F. Campaign and Governmental Conduct Code Section 3.224, September 7, 2005

Letter from Ann Aherne, Building Inspection Commission Secretary re: Arnie Lerner's Request for Waiver

Memo from Executive Director John St. Croix re: Proposed Amendments to the Campaign Finance Reform Ordinance Related to Contribution Limits, Use of Campaign Funds and Voluntary Expenditure Limits, September 7, 2005

San Francisco Campaign and Governmental Conduct Code, Chapter 1: Campaign Finance, June 2005

Executive Director's Report for the Meeting of September 12, 2005

Draft Minutes of the Special Meeting of August 4, 2005

Draft Minutes of the Regular Meeting of August 8, 2005

San Francisco Campaign and Governmental Conduct Code Section 1.200, Prohibition on Multiple Campaign Accounts

Collections on Ethics Accounts by BDR, 2004 and 2005 Calendar Years

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Bruce Bonacker, an architect and representative of the San Francisco Small Business Network, stated that he was concerned that the Commission's interpretations of the rules and laws regarding government ethics in San Francisco places sole proprietors at a disadvantage in their attempts to serve on City commissions. Sole proprietors who wish to serve on City commission have to go through a review process by the Ethics Commission in order to be able to engage in their profession. On the other hand, partners and corporations do not have to undergo this review process. The Commission's rules place an unnecessary, negative and unwarranted focus on small businesses in the City. He requested that the Commission consider the two waiver applicants with fairness.

III. Request for waiver from Campaign and Governmental Code section 3.224 (compensated advocacy ban). Patrick Buscovich, a structural engineer who seeks reappointment to the Unreinforced Masonry Building Appeals Board ("UMBAB"), has requested a waiver that would allow him to represent private parties before other City officers and employees as part of his duties as a structural engineer while serving on the UMBAB.

Executive Director John St. Croix stated that Mr. Buscovich recently resigned his seat from the UMBAB in order to avoid any conflict. He stated that because the UMBAB position requires that the seat be filled by a structural engineer and that there was a shortage of qualified structural engineers who reside in the City, staff recommended that the Commission grant this waiver request.

Mr. Buscovich stated that he is a licensed structural engineer, a native San Franciscan, and that he had been practicing in San Francisco since 1979, with his own firm since 1990. He is the principal in his firm, which has only one other structural engineer. He served on the City's Code Advisory Committee and served as vice president of the Building Inspection Commission. He also served as president of the Structural Engineers Association. He was then appointed by the governor to serve on the Building Standards Commission. He is now an officer and director of the Applied Technology Council. He co-authored the UMBAB legislation. The UMBAB requires that one of its seats be filled by a licensed structural engineer. There are approximately thirty licensed structural engineers in the City.

Mr. Buscovich stated that he specializes in UMBs and that when he was asked to serve on the UMBAB, he felt that he had a moral obligation to give back to the City by serving on the board. He was appointed to the UMBAB and then resigned because of the compensated advocacy ban. He stated that would like to serve on the UMBAB because this is his specialty and he did not see any potential conflicts that would arise from his serving on the UMBAB.

Vice-Chairperson McCoy asked Mr. Busovich when he was appointed to the Building Commission. Mr. Busovich stated that he was appointed to the Building Commission, along with Commissioner Eileen Hansen, in 1995 and he served for approximately one and one-half years. During that time, he co-authored the UMBAB legislation. He stated that there are only about 3,000 licensed structural engineers in California .

Commissioner Anglade asked if all the structural engineers in the City perform the same type of work as Mr. Buscovich. Mr. Buscovich stated that most of the structural engineers in the City work as a partner in a firm.

Commissioner Anglade asked if Mr. Buscovich had ever represented clients in front of the UMBAB. Mr. Buscovich stated that he represented a client in front of the UMBAB about five years ago and that the UMBAB only meets about three times per year. Commissioner Anglade asked Mr. Buscovich if he would recuse himself in the future if the need arose. Mr. Busovich answered in the affirmative.

Vice-Chairperson McCoy asked Mr. Buscovich if he could delegate authority to someone else in his firm. Mr. Buscovich stated that he has one partner who is a licensed structural engineer, one engineer who recently graduated, two drafters, one secretary, one MIS employee and one accountant. He stated that his partner does not do appeal work and that it would be impossible for him to practice without the waiver.

Commissioner Lynn asked if the Commission had jurisdiction over this issue because Mr. Busovich is not currently a sitting member of a commission or board. Deputy Director Mabel Ng stated that the Commission had previously adopted regulations interpreting Section 3.224 and the regulations themselves provide that a waiver may be granted upon the request of a member, the request of the member's appointing authority, or on the Commission's own initiative. Thus, the Commission did have jurisdiction to consider this waiver request.

Commissioner Lynn asked if the Commission could, under this authority, adopt a blanket waiver. He stated that staff's interpretation of the law gave the Commission broader authority that he thought it had. He stated that this was a problem he would like to resolve by not having it come before the Commission and getting public citizens upset over their perception over the Commission's actions.

Commissioner Hansen thanked Mr. Buscovich for being at the meeting. She stated that it was dilemma for the Commission to deal with this and that it was something that the Commission has been grappling with for quite some time. She stated that she had grave concerns about the waiver process. She stated that conflict of interest laws exist for a good reason and she wanted to adhere to those requirements. She stated that if the Commission granted waivers to everyone who came before it, then the Commission was not putting that much stock into these laws. She stated that she understood how

hard it is to find a structural engineer. She stated that with regards to the waiver granted to President Hirsch of the Building Inspection Commission, the Commission granted it with the provision that Mr. Hirsch could only interact with the Director of the Building Department, thereby mitigating some of the potential conflicts and some of the potential undue pressure and stress on staff. She stated that it was not a perfect solution, but it worked, because Mr. Hirsch is semi-retired and does not have that many cases.

Commissioner Hansen stated that she would like to do the same thing for Mr. Buscovich. She stated that she understood that Mr. Buscovich was at the Building Department on a regular basis and it was hard for her to imagine how he would do his job without interacting with the department's staff on a regular basis. She asked Mr. Buscovich how such a provision, that he only be allowed to interact with Director Amy Lee, would affect his business.

Mr. Buscovich responded that such a restriction would make it impossible for him to practice. He stated that the UMBAB appeals program and the UMBAB itself will most likely phase out within two years and he anticipated that the UMBAB would meet no more than six times during the next two years. He stated that he would be doing frequent work with the Building Department but very infrequent work with the UMBAB.

Commissioner Hansen stated that it was not just the work and how he spends his time, but the title he carries and the presumed power he carries. She stated that she had concerns about undue influence within the Building Inspection Department.

Mr. Busovich stated that the UMBAB is not the Building Inspection Commission and it only deals with UMBs. He stated that whether he serves on the UMBAB has no bearing on his credibility because he wrote most of the Code and people hold him as an expert in that field. He stated that as a board member, his only goal would be to resolve other people's issues in the best interests of the City.

Commissioner Anglade asked about the nature of Mr. Buscovich's relationship with DBI. Mr. Busovich stated that he performs pro bono work and provides advice on pro bono projects, he drafted rules regarding performance standards for strengthening buildings, and he gives brownbag talks.

Commissioner Anglade inquired about the relationship between DBI and the UMBAB. Mr. Buscovich stated that the UMBAB is a board within DBI that handles appeals for only brick buildings. He stated that there are three boards under the Building Commission - the Access Appeals Commission, the Board of Examiners, and the UMBAB.

Mr. Buscovich said that he had worked on approximately thirty percent of the brick building stock in the City, or about 600 of the 3,000 brick buildings in the City.

Commissioner Hansen made a motion to grant the waiver. Commissioner Lynn seconded the motion.

Commissioner Anglade stated that she was not comfortable with such a broad waiver and that she would be more comfortable with a waiver which included provisions regarding what to do in the event of a conflict. She stated that she would consider putting the recusal requirement into the waiver language.

Deputy City Attorney Claire Sylvia stated that legally, Mr. Buscovich would be required to recuse himself from cases where there was a conflict of interest. Commissioner Anglade stated that she would still like to see the recusal language written into the waiver.

Vice-Chairperson McCoy asked Commissioner Hansen if she would accept Commissioner Anglade's proposal as a friendly amendment. Commissioner Hansen responded that she would, but she was not sure if the Commission needed to include that language if it was already covered. She stated that she would discuss other friendly amendments.

Vice-Chairperson McCoy stated that he supported Commissioner Anglade's amendment because the Commission should be careful about the appearance of routinely granting waiver requests and that adding the recusal provision was appropriate. Commissioner Lynn stated that he would accept the amendment because he seconded the motion.

Commissioner Anglade suggested that the Commission add the provision that would prohibit Mr. Buscovich from accepting any clients with brick buildings.

Vice-Chairperson McCoy asked if Commissioner Hansen accepted Commissioner Anglade's proposal as a friendly amendment. Commissioner Hansen responded in the negative and stated that such a prohibition would severely curtail his livelihood.

Deputy Director Ng stated that section 3.224 deals with appearances before other boards and commissions and not the individual's own commission or board. She stated that the issue is not whether Mr. Buscovich should appear before the UMBAB but rather whether he should be allowed to appear before other boards and commissions. With respect to whether he should be allowed to appear before the UMBAB, there are separate financial conflicts of interests rules which govern that issue.

Executive Director St. Croix stated that it would be highly unlikely that any of Mr. Buscovich's new clients would appear before UMBAB, and even if this occurred, Commissioner Anglade's first friendly amendment would require Mr. Buscovich to recuse himself from the matter.

Commissioner Hansen clarified that she did not accept Commissioner's friendly amendment to include the recusal language. She stated that Mr. Buscovich was already required to recuse himself in situation where conflicts arise.

Commissioner Anglade stated that the Commission should include the recusal provision for the sake of public perception.

Public Comment:

David Pilpel stated that the Commission could include the recusal language in its letter to Mr. Buscovich, if it decides to grant the waiver, reminding him of the existing law which requires him to recuse himself in certain situations. He questioned if the Commission had the ability to condition the

waiver because the law was silent on this issue.

Michael Hamman, National Association of Remodeling Industry, stated that Mr. Buscovich was eminently qualified to serve on the UMBAB and that denying him the opportunity to do so would deny the community the benefits of Mr. Buscovich's expertise. He stated that DBI's support for Mr. Buscovich's appointment to the UMBAB was based solely on his expertise and not due to undue influence. He stated that the Commission needed to think about this regulation and urged it to grant the waiver.

Bruce Bonacker, Small Business Network, encourage the Commission to grant the waiver. He stated that although it was important that the Commission go through this process, an individual in a large firm could bypass this vetting process and would not have to appear before the Commission.

Commissioner Hansen and Mr. Bonacker engaged in a discussion of whether it was only sole proprietors who had to appear before the Ethics Commission to seek a waiver.

Mr. Buscovich stated that he would recuse himself from taking any compensated church clients.

Vice-Chairperson McCoy asked Mr. Buscovich if he ever appeared before the Building Inspection Commission. Mr. Buscovich responded in the affirmative, noting that it was rare, as he had appeared five to ten times before the BIC during the past ten years.

Charles Marsteller suggested that the BIC meet with the Ethics Commission and the Planning Commission to discuss ethics and waivers issues. He stated that this would be a helpful exercise. He stated that the Commission should include standard boilerplate language regarding recusals and that this would help validate the process to the public. He stated that he agreed with Commissioner's Anglade proposal to include the recusal language in the waiver.

Commissioner Hansen asked Mr. Buscovich what percentage of his business would be impacted if he could not accept any more UMB projects. Mr. Buscovich responded that approximately fifteen percentage of his practice involved UMB projects.

The Commissioners engaged in a discussion regarding the appropriateness of placing conditions in a waiver approval. Deputy City Attorney Claire Sylvia stated that although the Commission has placed conditions on past waivers, this situation was different. She stated that the Commission was currently discussing adding the recusal language and that this would be an odd condition because the law already requires recusal in certain situations.

Commissioner Hansen withdrew her original motion to grant the waiver and made a motion to grant the waiver for one year with the condition that Mr. Buscovich return to the Commission after one year and update the Commission on the waiver.

Motion 05-09-12-1 (Hansen/Lynn): Moved, seconded and failed to pass (2-2, Commissioners Anglade and Lynn opposing): that the Commission grant the waiver request for one year and

require Mr. Buscovich to appear before the Commission in one year.

Commissioner Hansen made a motion to approve the waiver request.

Motion 05-09-12-2 (Hansen/Lynn): Moved, seconded and passed (3-1, Commissioner Anglade dissenting): that the Commission grant the waiver request.

IV. Request for waiver from Campaign and Governmental Code section 3.224 (compensated advocacy ban). Arnie Lerner, who serves on the Access Appeals Commission ("AAC"), has requested a waiver that would allow him to represent private parties before other City officers and employees as part of his duties as a licensed architect while continuing to serve on the AAB.

Executive Director St. Croix explained that this waiver request was different from the previous request, as the AAC does not mandate that a member represent a profession, trade, business, union, or association. As such, under section 3.224, no member of the AAC is eligible to request a waiver. However, he noted that since Mr. Lerner's request, the Commission had received a letter from the secretary of the BIC, indicating the difficulty which the BIC faced when attempting to fill any of the AAC seats, especially the one requiring specific knowledge of construction and experience as a professional in the trades.

Commissioner Lynn asked if Mr. Lerner was eligible to request a waiver. Ms. Sylvia responded that it was a question of statutory construction. She stated that staff advised, and she tended to agree, that the requestor need to be a member of a specific profession.

Commissioner Lynn asked if a granting of the waiver request could be challenged as being inappropriate under this statute. Ms. Sylvia responded in the affirmative.

Commissioner Hansen stated that she was not convinced of the need to request or the ability of the Commission to grant the waiver.

Vice-Chairperson McCoy stated that he thought the Commission could act, but that this was a difficult situation because although the situation is similar to the prior waiver request, the statute specifically mentions specific professions.

Commissioner Lynn suggested that the Executive Director send a letter to the various agencies and commissions with expertise requirements and ask them if they think that those positions should be included in the exceptions.

Commissioner Anglade stated that the distinction between licensed professionals and those who work in a particular industry was elitist.

Commissioner Hansen stated that the Commission should review the Code and change it.

Arnie Lerner stated that he had been a licensed architect for over twenty years and he had been in private practice for seventeen years. He stated that his expertise was disabled access and that he had never appeared before the AAC, he visits DBI once every two weeks and occasionally appears before the Planning and Landmarks Preservation boards.

Commissioner Hansen thanked Mr. Lerner for appearing before the Commission. She stated that she would love for him to serve on the AAC and that she was frustrated by this dilemma. She stated that it would be a real loss to lose his expertise and that it was not in the Commission's purview to grant his waiver request.

Mr. Lerner stated that his experience in the construction industry was very different from his expertise in disability access and that the AAC seat to which he was appointed required that he be experienced in architecture. He stated that his seat was very difficult to fill and that his livelihood depended on being able to conduct his business as an architect.

Commissioner Anglade stated that she was stuck by the awkwardness of this situation. She stated that it would be a disservice to the City to prevent a citizen from offering his services to the AAC. Vice-Chairperson McCoy concurred.

Commissioner Hansen stated that she did not feel that the Commission was being unfair to Mr. Lerner. She stated that she was interested in hearing more on this issue from staff.

Executive Director St. Croix stated that there was nothing that would prevent the Commission from granting this waiver. He stated that the basis for no staff recommendation was the regulation's requirement that the individual be a member of a particular profession. He explained that staff's memo was based on a reading of the law and did not take into account the needs of the City and the difficulty of filling various commission seats.

Public Comment:

Mr. Busovich stated that Mr. Lerner was filling a trade position that required construction experience and that Mr. Lerner happened to be an architect. He stated that Mr. Lerner was a great candidate for the AAC seat.

Mr. Hamman stated that Mr. Lerner was an exceptional candidate for the AAC seat. He noted that Commissioner Hansen stated that Mr. Lerner was highly qualified for the position. He stated that the current rule precludes small businesses that must appear before DBI and that rejecting candidates such as Mr. Lerner would only detriment the City.

Mr. Bonacker stated that Mr. Lerner was a perfect candidate for the AAC seat. He stated that Mr. Lerner was one a handful of individuals with expertise in disabled access.

Commissioner Lynn stated that Mr. Busovich's argument was very convincing.

Commissioner Hansen stated that although she struggled with this issue during the meeting, she was now persuaded to grant the waiver request based on the experience factor. She stated that she was not absolutely convinced of the Commission's purview over this matter.

Motion 05-09-12-3 (Anglade/McCoy): Moved, seconded and unanimously passed (4-0): that the Commission grant the waiver request.

The Commission went into recess at 7:18 p.m. At 7:30 p.m. , the Commission reconvened.

- 1. Possible Amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing: (1) contribution limits; (2) use of campaign funds; and (3) voluntary expenditure limits.**

Deputy Director Mabel Ng stated that the purpose of tonight's meeting was to obtain guidance from the Commission regarding CFRO amendments related to contribution limits, use of campaign funds and voluntary expenditure limits.

Commissioner Lynn stated that he had submitted a proposed timetable to the Executive Director and that he had lots of specific proposals.

Commissioner Anglade asked if the Commission would have the opportunity to raise issues that were not included in staff's memo. Executive Director St. Croix responded that the Commission could raise related issues and then develop these issues for the September 19, 2005 meeting.

The Commissioners discussed the proposed amendments in staff's September 7, 2005 memo, as follows.

Contribution Limits

The Commissioners engaged in an extensive discussion regarding whether it should do any of the following: 1) increase the contribution limits; 2) adopt regulations to provide for changes in the contribution limit according to the Consumer Price Index; or 3) maintain the current \$500 limit.

Commissioner Lynn stated that he was in favor of lowering the contribution limit to \$300 for supervisory campaigns. Vice-Chairperson McCoy stated that he was in favor of maintaining the current \$500 contribution limit and Commissioner Anglade concurred. Commissioner Hansen stated that she did not want to increase the limit and wanted to look at both maintaining the current limit and decreasing it.

Public Comment:

Charlie Marsteller stated that because the Commission needed four votes and the Board of Supervisors needed a supermajority to approve any proposed amendments, the Commission should be pragmatic in its use of time regarding these proposals.

Affiliated Entities

The Commissioners engaged in a brief discussion regarding whether it should change the 50-50 partnership control rule to track the state rule.

Commissioners Lynn, Hansen, McCoy and Anglade were all in favor of tracking the state law.

Public Comment:

None.

Post Election Proceedings

The Commissioners engaged in a brief discussion regarding whether it should clarify when contributions for post-election legal proceedings may be solicited and accepted, and if so, when should contributions should be permitted.

Commissioners Hansen, McCoy and Anglade were all in favor of clarifying the law to require that these contributions be raised only after the election. Commissioner Lynn stated that he favored leaving the law as it currently exists.

Public Comment:

Mr. Marsteller stated that if a candidate were sued, he or she would want to expend money to defend himself or herself. He questioned the constitutionality of this proposal and whether the self-loan limit would still be applicable.

Contractor Contribution Ban: Time Period

The Commissioners engaged in a discussion regarding whether it should extend the time period for the contractor ban and if so, for how long.

Commissioner Lynn stated that the ban should be extended to the period of time when the donee could judge the performance of the contractor. Commissioner Hansen stated that the time period should be extended. Commissioner Anglade stated that three months was too short and questioned how the Commission could justify taking away First Amendment rights.

Public Comment:

Mr. Marsteller stated that most contracts and grants go through legislative bodies for approval. He stated that the Commission should consider extending public financing to all contracting entities, such as the Community College Board and the Board of Education.

Contractor Contribution Ban: To Whom Should it Apply?

The Commissioner engaged in a discussion regarding whether it should clarify what persons or entities associated with or related to a contractor should be subject to the contractor contribution ban when the contractor itself may not make contributions.

Public Comment:

Mr. Marsteller stated that the \$500 contribution limit was reasonable. He stated that the public has the right to know who is supporting which candidate and that it was more feasible to allow candidates to see who supports them rather than banning contributions.

Mr. Pilpel questioned how one could distinguish between members of nonprofits who negotiate from those who ratify the contracts. He stated that the Government Audits and Oversight Committee approves which entities can receive grants from the City and he questioned if grants were not the same as contracts.

Contribution-Limits for Candidate Controlled Ballot Measure Committees

The Commissioners engaged in a brief discussion regarding whether it should consider establishing contribution limits for candidate-controlled ballot measure committees.

Commissioner Lynn stated that he supported adding contribution limits for recall elections. He stated that he did not want to allow "stalking horse" candidates and supported establishing contribution limits. Commissioner Hansen and Anglade concurred.

Public Comment:

Mr. Marsteller stated that candidate-controlled ballot measure committees were not a problem because oftentimes they are not controlled by the candidate but by allies.

Use of Campaign Funds and Application to Ranked Choice Voting ("RCV")

The Commissioners engaged in a discussion regarding whether it should clarify that an RCV candidate may support the ranking of another candidate so long as the primary purpose of the candidate's expenditure is to elect himself or herself.

Commissioner Lynn stated that he supported clarifying this regulation. He stated that he supported adding contribution limits for recall elections.

Public Comment:

None.

Contributions to Charitable Organizations

The Commissioner engaged in a discussion regarding whether it should clarify whether the donation of campaign funds to charitable organizations is permitted.

Commissioner Lynn stated that this allows an individual to buy an organization's volunteers. Commissioner Hansen stated that a candidate would not know if he or she would have surplus funds, so it was unlikely that these contributions would buy any volunteers.

Public Comment:

Mr. Marsteller suggested that the Commission carve out an exception for itself.

Mr. Pilpel suggested that the law be amended to say that funds can not be contributions until they become surplus funds.

Surplus Funds

The Commissioners engaged in a brief discussion regarding whether it should permit incumbents to transfer funds from their campaign accounts to a re-election committee.

Public Comment:

Mr. Pilpel stated that when candidates contribute to the City, such contributions should be noted for future fines and penalties.

Multiple Campaign Accounts

The Commissioners engaged in a brief discussion regarding whether they should move section 1.200 into CFRO. Commissioners McCoy, Lynn, Hansen and Anglade all supported moving section 1.200 into CFRO.

Public Comment:

Mr. Pilpel stated that he supported this amendment. He questioned if it resolved issues regarding inaugural activities. Executive Director St. Croix responded that the Commission was not addressing those issues during this discussion.

Voluntary Expenditure Limits – Lifting of Limits

The Commissioners engaged in an extensive discussion regarding the following issues: 1) whether it should make changes related to the spending limit; 2) whether it should clarify that no candidate may accept the spending limit once it has been lifted, and if so, whether candidates should be permitted to participate in public financing even if they are precluded from accepting the spending limits; and 3) whether it should evaluate how the spending limits are working.

Commissioner Hansen stated that candidates should not be able to accept spending limits once they have been lifted. She stated that candidates who break the spending limits should not be eligible to receive public financing. She questioned how the Commission could prevent someone from filing the acceptance statement. She questioned how a candidate would be able to withdraw their acceptance of the spending limit.

Commissioner Lynn stated that the discussion is different depending on whether the candidate receives public financing. He stated that grass roots candidates should not be precluded from receiving public financing. He stated that the Commission should publicize when the limit is broken. He stated that the Commission should notify competing campaigns when the limits are lifted and also solicit their viewpoint regarding the lifting of the limits.

Commissioner Anglade stated that the prohibition against withdrawing the acceptance of the spending

limit was an odd law because it meant that a candidate could not break their promise to abide by the spending limit.

Public Comment:

Mr. Pilpel stated that there must be a meaningful relationship between the limit and the cost of the campaign. He stated that spending limits and public financing are different concepts.

Mr. Marsteller stated that Proposition N was generated by Common Cause out of Oakland and that the voluntary expenditure ceiling is more difficult to administer than originally expected. He stated that he was not sure what current purpose that this law serves.

Voluntary Expenditure Limits – Adjusting Spending Limits

The Commission engaged in a discussion regarding whether it should establish new spending limits for 2006 elections based on the Consumer Price Index.

Commissioner Lynn stated that there were two categories of candidates – those candidates receiving public financing and those who do not receive public financing. He suggested a \$300 contribution limit for supervisorial campaigns and raising the voluntary expenditure limit to \$120,000. He suggested buffering up public financing so that candidates could raise enough money to run effective campaigns.

Public Comment:

Mr. Marsteller stated that he supported Commissioner Lynn's recommendations. He stated that staff should consider the CPI when setting the spending limits and that staff should research a ballot initiative to add mayoral campaigns to the public financing program.

Mr. Pilpel stated that the spending limits did not bear a relationship to actual costs and that choice should be made at one point in time.

Voluntary Expenditure Limits – Qualified Campaign Expenditures

The Commission engaged in a discussion regarding the following issues related to qualified campaign expenses: 1) excluding candidate filing fees from expenses that are counted toward the voluntary expenditure limit; 2) excluding the costs for ballot pamphlet statements from expenses that are counted toward the voluntary expenditure limit; 3) excluding the costs associated with preparing and filing campaign finance reports from expenses that are counted towards the voluntary spending limits; 4) excluding wind-down expenses as qualified campaign expenses that are counted toward the voluntary spending limit; or 5) make no changes.

Commissioner Lynn stated that students should not be allowed to receive school credit for volunteer

campaign work. He stated that after 100 days, accrued debts should presumptively become contributions and therefore subject to the loan limit. He stated that all exploratory money should be out in the open and that there should be no accrued expenditures for those who hold a contract. He stated that it would make enforcement's job easier if it could prove coordination and suggested looking at the Los Angeles model.

Commissioner Lynn stated that he had already submitted these suggestions for next week's meeting. Executive Director St. Croix stated that he would send these suggestions to the other Commissioners and see if there was support for his suggestions.

Commissioner Anglade questioned how the Commission could regulate candidates who declined to accept the voluntary expenditure limit.

Public Comment:

Mr. Marsteller stated that the accrued debt issue was an important one that merited more discussion and that the FPPC was also looking at this issue.

Mr. Pilpel stated that the accrued debt issue was an important one.

Vice-Chairperson McCoy stated that agenda items VI and IX would be moved to the September 19, 2005 meeting.

VI. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (This item was continued to the September 19, 2005 meeting.)

The Commission went into recess at 7:18 p.m. At 7:30 p.m., the Commission reconvened.

VII. Closed session.

Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Motion 05-09-12-4 (Anglade/Hansen): Moved, seconded, and unanimously passed (4-0): that the Commission go into closed session.

At 10:13 p.m., the Commission went into a closed session. The following individuals remained in the room: Vice Chairperson McCoy; Commissioners Anglade, Hansen and Lynn; Deputy City Attorney Claire Sylvia; Executive Director John St. Croix; Deputy Executive Director Mabel Ng; Investigator/Legal

Analyst Richard Mo; and Assistant Investigator Linda Bjorke.

At 10:45 p.m. , the Commission reconvened in open session.

VIII. Discussion and votes regarding closed session action and deliberations.

A. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.

Motion 05-09-12-5 (Anglade/McCoy): Moved, seconded, and unanimously passed

(4-0): that the Commission not disclose any discussions held in closed session.

Public Comment:

None.

IX. Minutes of the regular Commission meeting of August 8, 2005. (This item was continued to the September 19, 2005 meeting.)

Public Comment:

None.

X. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

Executive Director St. Croix stated that the Commission had entered into a settlement agreement with SKS Investments, LLC, which failed to disclose four contributions totaling \$40,000 in 2000 in its major donor report. SKS will pay \$400 to settle the staff initiated complaint.

Commissioner Lynn stated the following: 1) staff should issue press releases indicating who did and did not accept the voluntary expenditure limits; 2) the Commission needs to review the lobbyist ordinance next year, including how to capture internet journalists and how to treat lobbyist data similar to campaign data; 3) the Commission should continue its enforcement review; 4) the Commission should clarify local law which conflicts with the Political Reform Act; 5) the Commission should cut its mandates and transfer some of its mandates to other departments, such as Statements of Incompatible Activities, conflict of interest regulations and campaign filing functions.

Commissioner Hansen stated the following: 1) the Commission should discuss the audit time frame in CFRO for publicly-financed candidates; 2) the Commission should capture county central committees under local law and CFRO; 3) the Commission should obtain a list of appointees who are required to have expertise in certain fields; 4) the Commission should work with the Executive Director to notify individuals on the list of waivers; 5) enforcement staff should redo the complaint update chart to include more information; and 6) the Commission should research if there was a way to assess staff time expended for and at Commission meetings.

Public Comment:

Mr. Pilpel stated that the Commission should bifurcate the ethics training and the Sunshine Ordinance training.

XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

XII. Adjournment.

Motion 05-09-12-6 (McCoy/Lynn): Moved, seconded and unanimously passed (4-0): that the Commission adjourn.

The meeting was adjourned at 10:58 p.m.

Respectfully submitted,

Richard Mo

Legal Analyst/Investigator

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Ethics Commission



30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
September 19, 2005, 6:00 P.M.
and AGENDA**

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

Please note this is not the usual Commission meeting time.

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Possible adoption of amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing: (1) contribution limits; (2) use of campaign funds; and (3) voluntary expenditure limits. Anticipated amendments affect sections that include: 1.114 (Contribution Limits and Affiliated Entities), 1.126 (Contractor Contribution Ban), 1.122 (Use of Campaign Funds), 1.200 (Multiple Campaign Accounts), 1.128 (Acceptance of Voluntary Spending Limits), 1.130 (Expenditure Ceilings), and 1.104 and 1.132 (Qualified Campaign Expenditures). The proposed amendments will be available in the Commission office and on the Commission web site. There will be an additional possible amendment to the Campaign Finance Reform Ordinance that would convert the accrued expenses of individual campaigns into contributions when they are not paid within 180 days of the attendant election day (or an alternative requirement that they be paid 180 days from the date of billing or result in conversion to contributions). (Discussion and possible action.)
- IV. Possible Amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing: (1) campaign reporting; and (2) administrative provisions (including forfeitures, penalties and late fines). At this meeting, the Commission will discuss and take public comment on various options and ideas. The Commission will not vote on these particular changes at the September 19 meeting. Any specific proposals will be presented to the Commission at the October 17 regular meeting for possible action. A staff memo will be available in the Commission office and on the Commission web site. (Discussion.)
- V. Executive Director's Report. An update of important Ethics Commission staff activities since the August monthly meeting. (Discussion.)
- VI. Minutes of the Special Meeting of August 4, 2005. (Discussion and possible action.)

VII. Minutes of the regular Commission meeting of August 8, 2005. (Discussion and possible action.)

VIII. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

X. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Frank Darby by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4589; by phone at 415 554 7724; by fax at 415 554 7854; or by email at suo@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Darby or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>. The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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Minutes of the Special Meeting of the
San Francisco Ethics Commission
City Hall, One Dr. Carlton B. Goodlett Place, Room 408
September 19, 2005

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I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 6:02 p.m.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Waukeen McCoy, Vice-Chairperson; Joe Lynn, Commissioner; and Michele Anglade, Commissioner.
Excused: Eileen Hansen, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; and Richard Mo, Legal Analyst/Investigator.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Charles Marsteller, David Pilpel, and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting and available to public at the meeting:

Memo from Executive Director John St. Croix re: Proposed Amendments to CFRO Related to Contribution Limits, Use of Campaign Funds and Voluntary Expenditure Limits, September 16, 2005

Memo from Executive Director John St. Croix re: Proposed Amendments to CFRO Related to Campaign Reporting and Administrative Provisions, September 15, 2005

S.F. Campaign & Govt. Conduct Code, Chapter 1

S.F. Campaign & Govt. Conduct Code Section 1.200

Executive Director's Report for the Meeting of September 12, 2005

Draft Minutes of the Special Meeting of August 4, 2005

Draft Minutes of the Regular Meeting of August 8, 2005

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

- III. Possible adoption of amendments to the Campaign Finance Reform Ordinance.** In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing: (1) contribution limits; (2) use of campaign funds; and (3) voluntary expenditure limits. Anticipated amendments affect sections that include: 1.114 (Contribution Limits and Affiliated Entities), 1.126 (Contractor Contribution Ban), 1.122 (Use of Campaign Funds), 1.200 (Multiple Campaign Accounts), 1.128 (Acceptance of Voluntary Spending Limits), 1.130 (Expenditure Ceilings), and 1.104 and 1.132 (Qualified Campaign Expenditures). The proposed amendments will be available in the Commission office and on the Commission web site. There will be an additional possible amendment to the Campaign Finance Reform Ordinance that would convert the accrued expenses of individual campaigns into contributions when they are not paid within 180 days of the attendant election day (or an alternative requirement that they be paid 180 days from the date of billing or result in conversion to contributions).

Deputy Director Mabel Ng stated that at its meeting on September 12, 2005, the Commission discussed possible CFRO amendments relating to contribution limits, use of campaign funds and voluntary expenditure limits. Based upon the Commission's discussion at that meeting, staff prepared a memo regarding possible amendments.

The Commissioners discussed the proposed amendments in staff's September 16, 2005 memo and took the following actions.

A. Contribution Limits

1. Section 1.114(a)-(c): Contribution Limits

Ms. Ng stated that Charter section C3.699-11(8) requires the Commission to "annually adjust any limitation and disclosure thresholds imposed by city law to reflect any increases or decreases in the Consumer Price Index. Such an adjustment would result in a per candidate contribution limit of \$600, an aggregate limit of \$600 times the number of offices on the ballot; a per committee limit of \$600, and an aggregate committee limit of \$3600 per calendar year for all committees.

Ms. Ng stated that staff recommended amending the law to reenact the contribution limits at the present level, and that staff did not have any evidence that the limit was too low to allow candidates to mount effective campaigns. Staff's recommended amendment would be reenacted to keep in place the existing level of contribution limits. The Commission would still need to consider each year whether changes in the CPI would require an adjustment, but the base year would be the year the limits were enacted (2005, or 2006).

Public Comment:

David Pilpel stated that the overall limit stated in section 1.114(2) was confusing. He inquired if the \$3,000 limit on contributions to committees included only county and city committees or any state committees opposing or supporting a local candidate.

Motion 05-09-19-1 (Anglade/Lynn): Moved, seconded and unanimously passed (4-0): that the Commission re-adopt the contribution limits in subsections (a), (b) and (c) of section 1.114.

2. Affiliated Entities

Ms. Ng explained that the affiliated entities rule requires the contributions of individuals to be aggregated with the contribution of entities which they control. This provision is patterned after the state rule, except that the local version presumes that both partners in a 50-50 partnership control the entity. Staff recommended amending the local rule so that it tracks state law and becomes less complex for the regulated community to follow.

Public Comment:

Mr. Pilpel expressed concerns regarding potential loopholes in the affiliated entity rule.

Motion 05-09-19-2 (Lynn/McCoy): Moved, seconded and unanimously passed (4-0): that the Commission delete language regarding the 50-50 partnership control rule in section 1.114(d), as recommended by staff.

3. Contractor Contribution Ban: Time Period

Public Comment:

Mr. Pilpel inquired regarding the difference between the date a contract is approved versus the date notice to proceed is given.

Charlie Marsteller stated that Los Angeles has a six-months ban and inquired if that agency's decision was based on a best practices rationale.

Motion 05-09-19-3 (Lynn/Gusukuma): Moved, seconded and unanimously passed (4-0): that the Commission extend the contractor contribution ban from three months to six months in section 1.126.

4. Contractor Contribution Ban: Scope of Ban

Ms. Ng explained that the Commission had received requests for advice regarding the scope of the contractor contribution ban. For example, a pending request for advice inquires whether the prohibition extends to the political action committee of a bank.

Likewise, questions have arisen regarding whether the prohibition applies to amendments of or modifications to a contract.

Ms. Ng stated that staff recommended amending section 1.126 to clarify its scope, by adding language to define what persons or entities are considered to "contract" with the City for purposes of the contractor contribution ban; setting a dollar threshold before the ban applies; and clarifying that the ban applies to an initial contract as well as any amendments or modifications of the contract.

The Commission expressed interest in clarifying the identity of the contractor for purposes of the contractor contribution ban. Some Commissioners expressed interest in applying the ban to members of boards of directors of a contractor, and some expressed interest in applying the ban to political action committees.

Public Comment:

Mr. Pilpel stated that he was concerned about the language and scope of the law.

Motion 05-09-19-4 (Lynn/Anglade): Moved, seconded and unanimously passed (4-0): that the Commission continue discussion regarding the scope of the contractor contribution ban to its December meeting.

B. Use of Campaign Funds

1. 1.122(b): Application to Ranked-Choice Voting ("RCV")

Ms. Ng explained that staff recommends amending Section 1.122 to provide that an RCV candidate may use his or her campaign funds to support the ranking of another candidate, provided that the primary purpose of the expenditure is to elect himself or herself.

Public Comment:

Mr. Pilpel stated that the proposed language was vague.

Motion 05-09-19-5 (Lynn/McCoy): Moved, seconded and unanimously passed (4-0): that the Commission adopt language in section 1.122 to permit a candidate to expend funds to support the ranking of another candidate in RCV.

2. 1.122(b): Contributions to Charitable Organizations

Ms. Ng stated that the Commission concluded that it did not want to follow the State law on allowing charitable contributions prior to the time campaign funds become surplus. Accordingly, staff proposed amending the law to expressly provide that a candidate may not use campaign funds, prior to the funds becoming surplus, to make charitable contributions. Staff's proposal involved amending the law to state more directly what the State law, which CFRO incorporates, provides and then to state the exceptions, or

limitations, in local law. Staff's proposal would allow an officeholder to use campaign funds for charitable purposes while in office. Staff also proposed allowing the transfer of funds between a candidate's committees for any candidate. Under existing law, candidates who are elected cannot do this because such transfers are permitted only after funds become surplus. The proposal creates a new provision that allows such transfers at any time.

Public Comment:

Mr. Pilpel suggested that the amendment refer to the funds in a candidate's campaign account, so as to avoid any possible confusion.

Motion 05-09-19-6 (Anglade/McCov): Moved, seconded and unanimously passed (4-0): that the Commission amend staff's recommendation in section 1.222(d) so that the language reads "At any time, funds held in a candidate's campaign account may be transferred to any legally constituted committee..."

Motion 05-09-19-7 (Anglade/Lynn): Moved, seconded and unanimously passed (4-0): that the Commission adopt staff's recommendation in section 1.222(d) as amended, so that the language reads "At any time, funds held in a candidate's campaign account may be transferred to any legally constituted committee..."

Motion 05-09-19-8 (McCov/Anglade): Moved, seconded and unanimously passed (4-0): that the Commission amend and adopt staff's proposal in section 1.122(b)(i) so that the new language in the sentence before the last states "Contributions solicited or accepted under this Section shall not be expended for the candidacy of any other individual or in support of or opposition to any measure or be donated to a charitable organization."

3. 1.200: Multiple Campaign Accounts

Ms. Ng explained that the Commission expressed interest in moving section 1.200, which currently is not part of CFRO but imposes limitations on campaign accounts, into the CFRO. Staff's proposed amendment to section 1.108 would move section 1.200 into CFRO, and 1.200 would have to be repealed. Staff recommended revising the text to state what section 1.200 says more directly.

Motion 05-09-19-9 (Anglade/Lynn): Moved, seconded and unanimously passed (4-0): that the Commission moved section 1.200, as it currently exists, into section 1.108(b), and not adopt staff's recommended new language because of concerns that the new language reflected a substantive change.

C. Voluntary Expenditure Limits

1. 1.128: Lifting of Limits

Ms. Ng explained that under Section 1.128, a candidate must elect to accept or not accept the spending limits by the deadline for filing nomination papers. It is possible that the limits may be lifted in a particular race before that filing deadline. Staff's proposed amendment would prohibit a candidate from accepting the expenditure ceiling at a time when the limits have already been lifted. This change would also necessitate a change to the section governing the notice in the Voter Information Pamphlet ("VIP"). That section requires the Director of Elections to include in the VIP a notice of whether a candidate accepted or rejected the spending limits. If some candidates will be prevented from accepting the spending limits because of the pending proposed amendment to 1.128, the result could be that the Director of Elections will report that those candidates rejected the limits, which would not be accurate. Staff proposed amending the law to have the Director of Elections indicate, where appropriate in the VIP, that the candidate did not accept or reject because the limits were already lifted. Staff assured that the proposal would not affect the ability of candidates to qualify for public financing.

Public Comment:

Mr. Pilpel offered some suggestions regarding the language of the amendment.

Mr. Marsteller stated that the Executive Director and enforcement staff should review possible enforcement scenarios to make sure that the regulation was workable.

Motion 05-09-19-10 (Lynn/Anglade): Moved, seconded and unanimously passed (4-0): that the Commission amend Section 1.128 as recommended by staff, with the following amendment: "The form may not be filed prior to June 1 of an election occurring in November or 120 days before an election held at any other time, and once filed may not be withdrawn."

2. 1.130: Adjusting Spending Limits

Ms. Ng explained that the Commission has adopted a regulation for adjustment of the voluntary spending limits and that Regulation 1.130(f)-1 provides that the Commission may adjust the spending limits annually to reflect changes in the California CPI. The regulation provides that the expenditure limit in effect on January 1, 1996, multiplied by the current CPI, divided by the base CPI from 1995, rounded to the nearest \$1,000 shall be the new amount for the City elections, other than for the Board of Supervisors. For the Board of Supervisors, the formula requires using the expenditure ceiling in effect on January 1, 2000, multiplied by the current CPI, divided by the base CPI from 1999, rounded to the nearest one thousand dollars (\$1,000). The regulation further provides that the September forecast for the calendar year is the figure to be used. The September figure is not yet available, so the following calculations are based on the June figure for 2005.

Given that the number is rounded to the nearest \$1000, the final amount is unlikely to change when the September figure is available.

The Commission may implement the new figures by regulation, or amend the law as it has done in the past to adopt new expenditure ceilings. If following the latter approach, the Commission may wish to consider adopting rounder figures. In addition, if the Commission amended the law to adopt new expenditure ceilings, it would need to amend Regulation 1.130(f) to reflect the adoption date of the new expenditure ceilings.

Public Comment:

Mr. Pilpel stated that more analysis was needed.

Motion 05-09-19-11 (Lynn/Anglade): Moved, seconded and unanimously passed (4-0): that the Commission adopt the new expenditure ceilings, as recommended by staff.

3. 1.104(n) and 1.148: Qualified Campaign Expenditures

Ms. Ng stated that some Commissioners had expressed an interest in amending the definition of qualified campaign expenditures to exclude filing fees. Some Commissioners had also expressed interest in excluding wind-down costs, or costs incurred after the election but not directly relating to electing the candidate.

Public Comment:

Mr. Pilpel suggested some language regarding post-election costs.

Motion 05-09-19-12 (Lynn/Anglade): Moved, seconded and unanimously passed (4-0): that the Commission continue consideration of qualified campaign expenditures (section 1.108) and use of public funds (section 1.148) to its December meeting.

Executive Director St. Croix stated that several Commissioners had expressed an interest in discussing the possibility of requiring accrued expenses that are over 180 days old be converted to contributions.

Commissioner Lynn stated that a loan to a committee is a contribution, and a debt can become an extension of credit and also a contribution. He stated that he was concerned that rich campaigns can enter into loans with rich vendors, while poor candidates cannot.

Public Comment:

Mr. Pilpel stated that he did not agree with the proposal because vendors want to be paid and do not intend to make contributions.

Mr. Marsteller stated that the proposal was worth studying.

The Commission went into recess at 8:06 p.m. At 8:16 p.m., the Commission reconvened.

- IV. Possible Amendments to the Campaign Finance Reform Ordinance.** In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing: (1) campaign reporting; and (2) administrative provisions (including forfeitures, penalties and late fines). At this meeting, the Commission will discuss and take public comment on various options and ideas. The Commission will not vote on these particular changes at the September 19 meeting. Any specific proposals will be presented to the Commission at the October 17 regular meeting for possible action.

Ms. Ng stated that the purpose of this agenda item was to obtain guidance from the Commission regarding CFRO amendments related campaign reporting and administrative provisions, including forfeitures, penalties and late fines. The Commission would then vote on possible amendments at its next meeting. The Commissioners discussed the proposed amendments in staff's September 15, 2005 memo, as follows.

A. Campaign Reporting

1. Section 1.135: Supplemental Reporting

The Commissioners engaged in a discussion regarding whether it should do either of the following, both of which were recommended by staff: 1) amend section 1.135 so that county general purpose committees are required to file regular pre-election reports in odd-numbered years if they make contributions or independent expenditures totaling \$500 or more during the period covered by the pre-election statement; and 2) amend section 1.135 to clarify that the Commission is authorized to require that reports be filed electronically.

Commissioner McCoy indicated support for both of staff's recommendations. Commissioner Lynn asked that committees making expenditures related to ballot measure committees be added.

Public Comment:

Mr. Pilpel stated that the Commission should require all county general purpose committees to file. He asked if the regulation applied only to general purpose committees or ballot measure and candidate committees.

2. Section 1.161 Disclosure and Filing Requirements for Mass Mailings

The Commissioners engaged in a discussion regarding whether it should do any of the following: 1) amend section 1.161 to clarify that the “paid for by” statement is required only once a mass mailing; 2) if the Commission determines that the “paid for by” statement should be disclosed in at least two places on a mailing, should the Commission amend section 1.161 to require that the statement be set forth in a text smaller than 14 points; 3) should the Commission amend section 1.161 to require disclosure on all mass mailings related to candidates for City elective office and not limit the disclosure to mass mailings paid for by a candidate; 4) should the Commission require two original or legible copies of a mass mailing to be filed with the Commission; and 5) should the Commission amend section 1.161 to authorize the Commission to require electronic filing of itemized disclosure statements.

Commissioners Lynn and Gusukuma supported extending the disclosure requirements to other campaigning media. Commissioner Anglade said that a disclaimer appearing twice on a mass mailing is not onerous; if only one is required, it should be required on the material that is substantive and in 14 point font.

Public Comment:

Mr. Pilpel suggested a 14 point disclaimer on the envelope and a 6 point disclaimer on each piece in the mailing.

3. Section 1.112 Electronic Campaign Disclosures

The Commissioners discussed whether it should amend section 1.170(d) to provide express authorization for the Commission to reduce or waive fines for the late filing of electronic reports. All of the Commissioners indicated support for this amendment.

Public Comment:

None.

B. Administrative Provisions

1. Section 1.114(f) Forfeiture of Unlawful Contributions

The Commissioners engaged in a discussion regarding whether it should do any of the following: 1) amend section 1.114(f) so that the entire contribution for which contributor information is lacking is forfeited, not just the amount that equals or exceeds the \$100 contribution limit; 2) if so, whether recipients should be given additional time to obtain contributor information and amend their disclosure reports; and 3) if the Commission adopts changes to section 1.114(f), should it adopt similar changes to section 1.120. There was no consensus among the Commissioners to change the current forfeiture provisions.

The first part of the report deals with the general situation of the country and the progress of the work. It is followed by a detailed account of the various projects and the results obtained. The report concludes with a summary of the work done and the conclusions reached.

The second part of the report deals with the financial aspects of the work. It gives a detailed account of the income and expenditure of the organization and shows how the work has been financed.

The third part of the report deals with the personnel of the organization. It gives a list of the staff and their duties and shows how the work has been organized.

The fourth part of the report deals with the results of the work. It gives a list of the projects completed and the results obtained. It also shows the progress of the work in various fields.

The fifth part of the report deals with the future of the organization. It gives a list of the projects proposed and the reasons for their selection. It also shows the plans for the future.

The sixth part of the report deals with the conclusions reached. It gives a list of the conclusions reached and the reasons for them. It also shows the recommendations made.

Public Comment:

Mr. Pilpel stated that the entire amount should be subject to forfeiture.

Mr. Marsteller stated that staff should research what the San Diego model was based on.

2. Violations of Sections 1.116 and 1.126

The Commissioners engaged in a discussion regarding whether it should do any of the following: 1) required that loan amounts made by a candidate in excess of the loan limits set forth in section 1.116 be deemed a contribution to the candidate's committee; 2) add a forfeiture provision to section 1.116; and 3) add a forfeiture provision to section 1.126.

Commissioner McCoy supported staff's recommendations. Commissioner Lynn asked staff to work on ways to develop a list of all City contractors.

Public Comment:

Mr. Pilpel stated that he did not agree with staff's proposal regarding section 1.116. He stated that the language in section 1.126 made compliance difficult.

3. Late Fines

The Commissioners engaged in a discussion regarding whether it should do any of the following: 1) adopt fines for the late filing of reports required only under the CFRO; 2) if so, what should be the amount of the fine; and 3) adopt a separate fine structure for reports filed late under section 1.135

Commissioner Lynn asked that late filings of forms under section 1.134 be treated like staff's recommendations regarding forms under section 1.135. Commissioner McCoy agreed with staff's recommendations.

Public Comment:

Mr. Pilpel stated that a \$10/day fine was appropriate.

4. Late Fines: Caps

The Commissioners engaged in a discussion regarding whether it should do any of the following: 1) adopt a cap to the fines imposed for the late filing of electronic campaign disclosure reports; 2) if so, what the cap should be; 3) adopt a cap for the late filing of reports required under sections 1.128, 1.134, 1.152, and 1.161; 4) if so, what should the cap be; 5) adopt caps for the fines imposed for the late filing of reports required under section 1.135; and 6) if so, what the cap should be.

Commissioner Lynn asked that the forms under section 1.134 be treated like the forms under section 1.135.

Public Comment:

Mr. Pilpel inquired what happens if a candidate did not accept the limits and failed to file a form on a timely basis.

Additional Proposals:

Commissioner Lynn that he had the following additional proposals: 1) extend the phone message law to electioneering communications; 2) require candidate committees to disclose the dates of expenditures; 3) require candidates to address push-polls; 4) require candidates to disclose costs incurred prior to forming a committee; 5) require disclosure of ballot measure authors; 6) coordinate campaign finance reporting with lobbyist reporting; 7) require the Commission to notify committees when they have failed to file and if no notice is given, then cap the fine to three months; 8) develop software for the campaign finance database to track what happens when someone amends a report; 9) develop a citizens advisory board; 10) study the filers expedited program; 11) require filer training for waivers; 12) consider state committee audits; 13) collect e-mail addresses on filer forms; and 14) require waiver requestors to submit their Social Security number to the Bureau of Delinquent Revenues.

Commissioner Anglade stated that in the aggregate, she did not like so much regulating.

V. Executive Director's Report.

Executive Director St. Croix noted that AB 1391 had expired and been referred back to the State Appropriations Committee.

Commissioner Lynn stated that staff should gather facts to support the imposition of a \$500 contribution limit for electioneering communications. He also stated that the five-month goals needed to include a continuation of the enforcement discussion.

Commissioner Lynn inquired how staff determined the order of its audits. Ms. Ng responded that elected candidates are audited first. The rest of the audits are determined by two factors: 1) whether the candidate responded to a staff questionnaire; and 2) random selection.

Public Comment:

Mr. Pilpel inquired if the omission of the respondents names on the Commission's website enforcement summaries was deliberate. He also inquired about the status of audits and SEI non-filers.

VI. Minutes of the Special Meeting of August 4, 2005.

Motion 05-09-19-13 (McCoy/Lynn): Moved, seconded, and passed (4-0): that the Commission approve the minutes of the special meeting of August 4, 2005.

Public Comment:

None.

VII. Minutes of the regular Commission meeting of August 8, 2005.

Commissioner Lynn requested that the following change be made in the fourth paragraph of Section IX:

He stated that an August 3, 2005 press release by the Mayor's Office noted proposed that the Building Inspection Commission received receive funding for 33 new staff and that the Ethics Commission needs to be at the table.

Motion 05-09-19-14 (Anglade/McCoy): Moved, seconded, and passed (4-0): that the Commission approve the minutes of the regular meeting of August 8, 2005, with the suggested change.

Public Comment:

None.

VIII. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

Commissioner Lynn stated the following: 1) the Commission should reach out to the poor communities and ask them why they do not participate in the voting process; 2) the Commission should review its emergency response plans; 3) the Commission should review legislative matters concerning political activities by attorneys, extending conflict of interest rules to the Treasure Island Development Authority, and imposing a \$500 contribution limit for electioneering communications; 4) the Commission should review the rule requiring two Commissioners to overturn enforcement staff's recommendations regarding complaints, so that if only four Commissioners are present, a 2-2 tie would automatically continue the matter to the next meeting where all five Commissioners are present; 5) the Commission should discuss the problem regarding its inability to

communicate without holding seriatic meetings; and 6) the Commission should consider how the rules of order have been affected by the Sunshine Ordinance.

Public Comment:

Mr. Pilpel stated that he agreed with Commissioner Lynn's concerns regarding seriatic meetings, as well as his suggestion regarding a 2-2 tie and enforcement recommendations. He also stated that the state legislature program for next year should be calendared.

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

X. Adjournment.

Motion 05-09-19-15 (Lynn/McCoy): Moved, seconded and unanimously passed (4-0): that the Commission adjourn.

The meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Richard Mo
Legal Analyst/Investigator

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Ethics Commission



30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING/RETREAT DOCUMENTS DEPT.
October 15, 2005, 10:00 A.M.
and AGENDA

OCT - 7 2005

Room 34, City Hall

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1 Dr. Carlton B. Goodlett Place, San Francisco

Please note this is not the usual Commission meeting time or room.

Also, note that access to the meeting is only at the Grove Street Entrance to City Hall.

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda which are within the jurisdiction of the Ethics Commission.
- III. Mission and Values of the Commission – The Commission will engage in an overview of the history, function and purpose of the Ethics Commission. Copies of the original voter's guide dealing with Proposition K (creating the Ethics Commission), the proposition itself, and Charter provision relating to the Ethics Commission are available at the Commission office. *(Discussion)*
 - A. A Review of the Mission outlined in Charter based on the following materials:
 - 1) Voter's Pamphlet description of Ethics Commission
 - 2) Specific duties imposed by Charter
 - B. Other duties established in law
- IV. The Commission will discuss prioritizing short-term and long-term goals for the foreseeable future as outlined below. *(Discussion)*
 - A. Setting goals
 - B. Prioritizing goals
 - C. Executing goals
- V. The Commission will review the protocols, roles and conduct of Commissioners related to their duties and responsibilities as members of Commission, as outlined below. *(Discussion)*
 - A. Commissioner to Commissioner
 - B. Commissioners to Executive Director
 - C. Commissioners to staff other than the Executive Director
 - 1) Enforcement process
 - 2) Questions and requests for advice
 - 3) Directions to staff to perform tasks

D. Commissioners to Public

- 1) Restrictions on Political/Outside Activities
- 2) Speaking on behalf of the Commission

VI. The Commission will review the elements of meeting protocol, discussing the elements of how Commission meetings are conducted, as outlined below. At the conclusion of this agenda item, Commissioners may take a few minutes to make concluding comments regarding the retreat. (*Discussion*)

- A. Making motions and allowing other Commissioners the opportunity to speak
- B. Taking public comment
- C. Placing matters on the agenda

VIII. Public comment on matters appearing or not appearing on the agenda which are within the jurisdiction of the Ethics Commission.

IX. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Frank Darby by mail to Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at saf@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Mr. Darby or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317 and web site www.sfgov.org/ethics

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SF Ethics Commission

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October 15, 2005

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(Approved as amended 12/12/05)

Minutes of the Special Meeting/Retreat of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place , Room 34

October 15, 2005

I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 10:13 a.m.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Waukeen McCoy, Vice-Chairperson; Joe Lynn, Commissioner; Eileen Hansen, Commissioner; and Michele Anglade, Commissioner (arrived 10:25 a.m.)

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator; Shaista Shaikh, Public Finance Administrator; Sarah Dang, Campaign Finance Officer.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Rick Bainter, Common Cause; Charlie Marsteller, and David Pilpel.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting and available to public at the meeting:

San Francisco Charter Section 15.100 – 15.107, Appendix C: Ethics Provisions
Proposition K, Voter Information Pamphlet, November 1993

5-Month Goals Target, Ethics Commission, 2005

Excerpts from Roberts Rules of Order

"Big Money Flows into Mayoral Campaigns in S.F.", S.F. Examiner, October 14, 2005

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

III. Mission and Values of the Commission – The Commission will engage in an overview of the history, function and purpose of the Ethics Commission. Copies of the original voter's guide dealing with Proposition K (creating the Ethics Commission), the proposition itself, and Charter provisions relating to the Ethics Commission are available at the Commission office.

A. A Review of the Mission outlined in Charter based on the following materials:

- 1) Voter's Pamphlet description of Ethics Commission**
- 2) Specific duties imposed by Charter**

B. Other duties established in law

Executive Director John St. Croix gave a brief overview of the creation of the Ethics Commission. He stated that before there was a Commission, the duties it now has were spread around various City departments. He stated that the Commission was created by the 1993 passage of Proposition K, primarily for the purpose of restoring faith in City government and creating public confidence in local government. He explained the Commission's main responsibilities: 1) investigations/enforcement of alleged violations of laws within the Commission's jurisdiction; 2) campaign filings for both candidates and ballot measures; 3) auditing of candidates and committees, including publicly-financed candidates; and 4) administration of the public financing program. He stated that each of these responsibilities requires heavy interaction with the public, all of which staff handles very well.

In response to Commissioner Gusukuma's question, Charlie Marsteller responded that Proposition K passed by sixty to seventy percent. Mr. Marsteller stated that the original Commission staff members were all volunteers. Mr. St. Croix stated that initially, the only paid staff were temporary employees and that the Commission was largely a volunteer organization. Mr. Marsteller stated that the creation of the Ethics Commission led to a substantial costs savings to the City.

Mr. St. Croix stated the Commission's annual budgets since its inception were as follows: 1994-95, \$157,000; 1995-96, \$261,000; 1996-97, \$313,000; 1997-98, \$394,000; 1998-99, \$475,000; 1999-2000, \$610,000; 2000-01, \$727,000; 2001-02, \$877,000; 2002-03, \$777,000; 2003-04, \$909,000; 2004-05, \$1,052,000; 2005-2006, \$1,382,000.

Mr. St. Croix stated that the Commission's staffing since its inception has been as follows: 1995, interim and volunteers only; 1996, 4 FTEs; 1997, 4 FTEs; 1998, 6 FTEs; 1999, 6 FTEs; 2000, 7 FTEs; 2001, 9 FTEs; 2002, 11 FTEs; 2003, 10 FTEs; 2004, 9 FTEs; 2005, 12 FTEs.

Mr. St. Croix stated that the Charter provides that the Commission have five members, each of whom serves a six-year term on a staggered basis. The five members are each appointed by a different authority: the District Attorney, the City Attorney, the Board of Supervisors, the Mayor, and the Assessor. In terms of staffing, the Commission has the Executive Director, 11 staff members, a few temporary employees and several volunteer interns.

Mr. St. Croix stated that in addition to the Charter, the Administrative Code, the San Francisco Campaign and Governmental Conduct Code and the Commission's own regulations govern how the Commission conducts its business. He stated that the mandates listed in the Charter are not exhaustive of all the tasks required of Commission staff. He noted that staff works with the Commissioners, the City Attorney and members of the public to interpret laws within its jurisdiction, and that this is one of the major services that the Commission provides. He stated that investigations and enforcement are confidential, the Commission has revisited the issue of confidentiality and that confidentiality is an important issue because investigations and enforcement matters impact the lives and livelihoods of respondents. He stated that the voters have erected a structural expectation that San Francisco will be a leader in clean government.

Commissioner Lynn inquired about the provision in the Charter which states that

the Commission shall investigate a complaint only after referring the matter to both the District Attorney and the City Attorney and both of those agencies decline to take action on the complaint. Deputy Executive Director Ng stated that that provision had since been changed so that the Commission need not wait for a response from those two agencies before it can conduct an investigation on alleged violations of local law. Deputy City Attorney Claire Sylvia explained that action by either of these two agencies no longer precludes the Commission from conducting its own investigation.

Commissioner Lynn stated that the Charter gives the Commission jurisdiction over matters related to campaign finance, conflicts of interest and governmental ethics. He inquired if governmental ethics includes Sunshine laws. Mr. St. Croix answered in the affirmative.

Commissioner Lynn stated that the Commission was lacking in its education and public awareness efforts about campaign finance laws. He stated that he was aware that staff was shorthanded and that this may be an area where a citizens advisory committee could be of assistance. He stated that as an example, with regard to the lobbyist ordinance, staff should be finding out from reporters, elected officials and members of the public what kind of information would be helpful to them. Right now, the Commission does not collect information about the true sources of funds for lobbyists, and this is an obvious thing to check. He inquired if the Commission had the authority to prescribe forms for reports without the approval from the Board of Supervisors. Mr. St. Croix stated that most of the Commission's forms are designed without any input from the Board.

Commissioner Lynn inquired about the Commission's seminar for newly elected officials. Mr. St. Croix stated that for newly elected Supervisors, he has made a presentation to explain the function of the Commission. He stated that Commission staff recently held a training seminar for the Mayor's Office regarding conflicts of interest, incompatible activities and campaign finance. He noted that over 70 people attended this training, the participants were very responsive and staff engaged in a question and answer session after the presentation. He stated that staff would hold the same seminar for all department heads, boards and commissions.

Commissioner Lynn inquired if Charter Section C3.699-14 gave the Commission the authority to impose fees. Ms. Sylvia explained that the imposition of fees must be related to the administration and enforcement of ordinances and provisions under the Commission's jurisdiction. Commissioner Lynn stated that

this was an important provision to look at because budget season was coming up.

Commissioner Anglade stated that educational programs were a good idea in theory, but that it is not the Commission's responsibility to serve the media, but rather the Commission's function is to serve the public. She stated that serving the needs of the press is not part of the Commission's function. Commissioner Lynn stated the Commission has limited enforcement resources and that historically it has had only one half-time investigator. In his experience as campaign finance officer, most of the scrutiny regarding possibly illegal activity was brought by the press rather than the enforcement division. He stated that the press was an additional resource. Commissioner Anglade stated that she disagreed and that the press was politicized and that that was a problem. She stated that it was not the press' role to guide the Commission's enforcement activities.

Commissioner Hansen stated that Charter Section C3.699-10, effective administration and implementation over governmental ethics, was an important provision. She stated that she did not see any guidance as to what this section means, so she surmised that the Commission was free to interpret the provision either broadly or narrowly. She stated that she was interested in the issues of resources and prioritization. She stated that it was important to educate the public.

Commissioner McCoy stated that he thought that the public thinks of the Commission as an enforcement agency and not an educational agency, and that the Commission should try to change this perception by providing more educational programs for the public. Commissioner Lynn concurred and stated that education programs were important.

Chairperson Gusukuma stated that she heard the Commissioners saying that it was had accomplished a great deal, but they wanted staff to do more in certain areas.

Public Comment:

Charlie Marsteller stated that a normal startup takes five years for an organization to gain competency and effectiveness.

David Pilpel inquired about the Whistleblower program. Executive Director St.

Croix stated that the Whistleblower program was now administered by the Controller's Office, although the Commission has jurisdiction over the protection of whistleblowers.

IV. The Commission will discuss prioritizing short-term and long-term goals for the foreseeable future as outlined below.

A. Setting goals

B. Prioritizing goals

C. Executing goals

Mr. St. Croix explained that each Commissioner would express their goals for the upcoming year and then the Commissioners as a whole would determine how to prioritize those goals.

Facilitated by Chairperson Gusukuma, the Commissioners engaged in an extensive discussion regarding the short-term and long-term goals of the Commission. The Commissioners listed the following issues which they considered priority items.

Commissioner McCoy: Educational programs and seminars for the public; conflict of interest laws; CFRO regulations; and amendments to other laws.

Commissioner Lynn: Stricter lobbying laws; and audit selection process.

Commissioner Anglade: Educational programs for the public; and prioritization of enforcement matters based on alleged violation.

Commissioner Hansen: Enforcement and investigation discussion; lobbyist ordinance; and governmental ethics.

Chairperson Gusukuma: Data integration between lobbyist and campaign finance data.

The Commissioners agreed that the following four items were the most important priorities for the Commission: 1) educational programs; 2) lobbyist ordinance review; 3) investigations and enforcement; and 4) data integration.

Commissioner Lynn inquired about the December goal for determining audit selection and stated that he would like to change that to development of audit criteria. Mr. St. Croix stated that in the past, staff took the committees in the target group and ranked them according to expenditures, and then randomly selected the committees. Shaista Shaikh, Public Finance Administrator, stated that in the past, staff has always discussed the selection criteria with the Commission, prior to selecting which committees to audit.

Mr. St. Croix stated that it was a top priority to integrate all of the Commission's data. He stated that he was negotiating with DTIS to accomplish this task. He noted that part of the Commission's FY 2005-2006 budget included \$20,000 specifically for his purpose. He stated that he hoped that the data integration could be accomplished within two years, but that that was an overly optimistic estimate.

Mr. St. Croix explained that many of the Commission's mandates were deadline driven, so that these automatically become top priorities. He stated that although public educational programs were important, staff has to accomplish the time sensitive mandates. He stated that in order for there to be educational programs, there must be an audience. He noted that the last three quarterly lobbyist seminars have been cancelled due to lack of interest. He mentioned that Los Angeles requires all candidates and treasurers to attend mandatory training and that the Commission could consider adopting such a regulation.

Mr. St. Croix stated that he was constantly juggling what the Commission wishes to accomplish as its primary goals, and that staff carries out these goals. He stated that the actual execution of these goals requires staff time and efforts and each additional request from the Commission requires additional staff time and efforts.

Mr. Lynn stated that educational priorities can be folded into whatever the Commission chooses. For example, having courses on the lobbyist law will elicit public comment as to what kind of changes might be helpful.

Richard Mo, Chief Investigator, stated that the purpose of the lobbyist workshops is to educate people about what forms to file and how to file them, because staff's

role is to ensure that people comply with the lobbyist ordinance. He stated that it was not staff's responsibility to teach people how to extrapolate, cull or analyze lobbyist data.

Chairperson Gusukuma stated that she wanted to wrap up the discussion regarding investigations and enforcement.

The Commission recessed at 11:57 a.m. The Commission reconvened at 12:14 p.m.

The Commissioners were then polled to rank each of these four items. Their votes, using the aforementioned numbering system, were as follows.

Commissioner McCoy: 4, 1, 3, 2.

Commissioner Lynn: 3, 2, 1, 4.

Commissioner Gusukuma: 3, 4, 1, 2.

Commissioner Anglade: 3, 4, 1, 2.

Commissioner Hansen: 2, 3, 1, 4.

Based upon these votes, the Commission decided the following order of priority for these four items, from most important to least important: 1) investigations and enforcement discussion; 2) data integration; 3) educational programs; and 4) lobbyist ordinance review.

Public Comment:

Mr. Marsteller stated that USF had an auto audit subroutine. He also stated that audits and enforcement are intertwined.

Mr. Pilpel stated that education was important because it would reduce the number of nonfilers. He stated that data integration was ongoing.

V. The Commission will review the protocols, roles and conduct of Commissioners related to their duties and responsibilities as members of Commission.

A. Commissioner to Commissioner

B. Commissioners to Executive Director

C. Commissioners to staff other than the Executive Director

1) Enforcement process

2) Questions and requests for advice

3) Directions to staff to perform tasks

D. Commissioners to Public

1) Restrictions on Political/Outside Activities

2) Speaking on behalf of the Commission

Deputy City Attorney Claire Sylvia presented information on the laws and rules governing Commission conduct. She said that per Charter Section 4.102, the Commissioners can communicate with the staff only through the Executive Director, or as authorized by him. She stated that the Commission acts collectively as a five-member body, rather than individually. She explained that the Commission as a whole sets the priorities for the Commission and it controls the Executive Director by creating policies for him to implement. If he fails to carry out these policies, the Commission can terminate him. She said that Commissioners cannot unilaterally change the policies set by the Commission by communicating directly with staff. She reminded the Commission that when the Commission as a whole establishes policies, it will take time for the Executive Director to implement those policies. Thus, when a Commissioner individually contacts the Director with a request, that means the Director must put aside the implementation of the Commission's priorities to get to the individual Commissioner's request. But the Director cannot drop what he has been asked by the Commission as a whole to do. Ms. Sylvia added that the Director must be free to say that he cannot get to the Commissioner's individual requests.

Commissioner Lynn asked about a situation where a Commissioner had a question regarding what its policy was on a certain matter, and whether it would be appropriate to ask the Executive Director. He asked how a Commissioner could bring up a policy issue if it was not on the agenda. Ms. Sylvia responded that the Commission's by-laws state that the Chairperson and the Executive Director set the agenda. She stated that at every meeting, under the "Items for Future Agenda Items", Commissioners could make individual requests; however,

without at least three Commissioners supporting a request, it might not get onto the agenda.

Commissioner Lynn inquired if he could email the Chairperson a request to put an item on the agenda. Ms. Sylvia replied in the affirmative: a Commissioner can email all Commissioners such a request, so long as the Commissioner who sends the email does not discuss the item and other Commissioners should not respond to the email.

Commissioner Hansen stated that the Commission did not have a formal process by which to gauge their fellow Commissioners' interest in proposed agenda items. Ms. Sylvia responded that under the current system, if no other Commissioners express support for a colleague's idea, that in fact serves as a process by which Commissioners indicate their support or lack thereof for proposed future agenda items.

Commissioner Hansen stated that the Commission does not currently allow for a "what's the sense of the body" inquiry. Ms. Sylvia responded that the Commission's current system does provide for this. Mr. St. Croix concurred with Ms. Sylvia and stated that he factors this into consideration during the meeting.

Commissioner Lynn stated that the Commission could not disclose closed session items during the proposed agenda items part of the meeting. He asked if the seriatim rules apply to closed sessions. Ms. Sylvia responded that the Sunshine rules apply to closed sessions.

Commissioner Hansen stated that she did not have way of knowing if other Commissioners supported a request to calendar an item for discussion. Chairperson Gusukuma concurred, stating that with respect to enforcement staff recommendations, she may elect to request that an item be calendared, but she has no way to tell if there is at least one other Commissioner who will also request that the same item be calendared. She stated that she interpreted Commissioner Hansen's question as being whether a Commissioner could send out an email to the other Commissioners, stating that he or she wanted a complaint calendared, so as to inform the other Commissioners of her request. Ms. Sylvia said that that would be okay, as long as the Commissioners do not discuss the item.

Commissioner Lynn stated that he often sends requests to the Executive Director

to retrieve public information. He inquired if there was an alternate avenue of retrieving information without making a request directly to the Executive Director, so as not to burden the Executive Director. Ms. Sylvia responded that the Commission needs to bear in mind that the Commission staff is very small and very busy, and that the role of the Commissioners is to focus on the policies of the Commission. She stated that every time a Commissioner contacts the Executive Director or a staff member, even with seemingly innocuous inquiries, that person stops what he is doing and takes time and effort to respond to the Commissioner's request. She said that a lot of information at the Commission is public information and that a Commissioner can visit the office to obtain the information.

Commissioner Lynn asked if it was appropriate to ask staff for assistance in locating files in the public documents room. Mr. St. Croix responded in the affirmative. He noted that a Commissioner's requests for information require staff resources, and he stated that the vast majority of information requests that he receives comes from Commissioner Lynn. He stated that currently, he had more than twenty requests pending from Commissioner Lynn. He added that because of time and staff constraints, unless the Commission speaks with a common voice, some of the individual requests will remain undone.

Commissioner Lynn stated that his number one priority for the next budget cycle was to obtain funding for a Commission secretary, so as to alleviate this burden on the Executive Director and other staff. Mr. St. Croix stated that he appreciated this, but obtaining a Commission secretary is probably the least of his priorities. Mr. St. Croix stated that it was Commissioner Lynn's priority and that he had never heard any other Commissioner raise this as a priority. He stated that all staff members perform their own secretarial work.

Chairperson Gusukuma interjected that simply having a Commission secretary would not alleviate the staff of the burdens imposed by individual Commissioner requests, because a secretary would not have familiarity with the issues involved. She said that requests such as obtaining documents and information related to agenda items are appropriate and should take precedence over other requests because the Commission as a whole has decided that these are priorities. But other items should go to the bottom of the list, unless the Commission agrees that they are priorities. She stated that individual Commissioners could email her with proposed agenda items.

Commissioner Hansen stated that she limited her communications with other

Commissioners and staff outside of meetings. She stated that with regards to requests made outside of meetings, it would be helpful to get a response from the Executive Director.

Commissioner Lynn stated that he had limited his emails to the Executive Director to ten a week, which he said was a lot. But he said that he also had an understanding that if the Executive Director felt overloaded, he should let him know. Chairperson Gusukuma declared that a Commissioner should not put the Executive Director in such a position. She added that when the Commission evaluates the Director for his performance, it cannot evaluate him on whether he responded to a particular request or drafted a particular memo in response to an individual request. Rather, the Commission should evaluate the Executive Director on whether he executed what the Commission as a Commission asked him to execute. She stated that it was not fair for the Commissioners to have secretive objectives by which they could judge the performance of the Executive Director.

Ms. Sylvia discussed the rules governing investigations and enforcement. She explained that the Commissioners sit as judges and enforcement staff serves as the investigator and prosecutor. Hence, the Commissioners must remain neutral until staff presents the evidence to them, and the Commissioners can not get involved in the prosecution. Even in instances where the Commission initiates a complaint, it merely refers the complaint to enforcement staff and from that point on, the Commissioners have no further involvement until enforcement staff produces a recommendation as to the disposition of the complaint.

Executive Director St. Croix stated that although other jurisdictions may appear to have a slightly more open investigations/enforcement process, in reality all the jurisdictions shared a common practice that the enforcement process is not public.

Ms. Sylvia discussed the rules governing political activity. She explained that the Commission is a politically neutral body and that it was its job to enforce the law in a politically neutral fashion. She stated that the Commissioners had determined that they were prohibited from participating in political functions where the primary purpose of the function is fundraising to support or oppose a local candidate or local ballot measure. She briefly discussed the rules regarding Commissioner interaction with the media.

Mr. St. Croix stated that Commissioners must exercise caution when dealing with

the media. As an example, he referenced an October 14, 2005 article from the San Francisco Examiner. Mr. St. Croix stated that a reader could easily infer that Commissioner Lynn was speaking on behalf of the Ethics Commission in his official capacity as a Commissioner, and that this could subject both the Commission and Commissioner Lynn to serious ramifications. Chairperson Gusukuma concurred with Mr. St. Croix.

Public Comment:

Mr. Marsteller thanked the Commission and staff for holding the retreat. He suggested that staff obtain an expert regarding the data integration issue.

Mr. Pilpel inquired how the Commission as a body could initiate a complaint. He stated that the Commission should make more information about the process available to the public.

VI. The Commission will review the elements of meeting protocol, discussing the elements of how Commission meetings are conducted, as outlined below. At the conclusion of this agenda item, Commissioners may take a few minutes to make concluding comments regarding the retreat.

A. Making motions and allowing other Commissioners the opportunity to speak

B. Taking public comment

C. Placing matters on the agenda

Mr. St. Croix explained that Commission protocol is based upon Robert's Rules of Orders and is designed to help the Chairperson conduct an orderly meeting.

Chairperson Gusukuma stated that she tries to be as consistent in possible during each meeting, giving equal consideration to each Commissioner's requests and/or comments. She stated that she did not want public comment to turn into a conversation between an individual member of the public and the Commission.

The Commissioners engaged in an extensive discussion regarding the following topics:

1) how to make motions; 2) giving fellow Commissioners the opportunity to

speak;

3) taking public comment; and 4) placing matters on future agendas (Agenda Item V.)

Public Comment:

Mr. Marsteller stated that the Proposition O hearings were televised at a cost of \$500. He stated that the Commissioners must learn to tolerate each other because each member has a different inquiry mode.

Mr. Pilpel stated that the electioneering communications hearing in January should be televised. He stated that the Ethics Commission was different from other City commissions because its issues lend themselves to discussion and therefore a three-minute time limit on public comment may not always be sufficient.

VII. Public comment on matters appearing or not appearing on the agenda which are within the jurisdiction of the Ethics Commission.

None.

VIII. Adjournment.

Motion 05-10-15-1 (Lynn/Anglade):Moved, seconded and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 1:58 p.m.

Respectfully submitted,

Richard Mo

Legal Analyst/Investigator

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Ethics Commission



30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
October 17, 2005, 6:00 P.M.
and AGENDA**

**Room 408 City Hall
1 Dr. Carlton B. Goodlett Place, San Francisco**
Please note that this is not the normal meeting time.

DOCUMENTS DEPT.

OCT 13 2005

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10-11-05 AUC 001 KLC

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Possible adoption of amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing: (1) supplemental campaign reporting; (2) disclosure and filing requirements for mass mailings and campaign advertisements; (3) limits on loans by candidates; and (4) late filing fees. Anticipated amendments affect sections that include: 1.135 (Supplemental Reporting); 1.161 ((Disclosure and Filing Requirements for Mass Mailings); 1.163.5 (new section: Disclosure Requirements – Campaign Advertisements); 1.116 (Limits on Loans from candidates); 1.170 (Late Filing Fees). A staff memo including anticipated amendments will be available at the Commission office and on the Commission web site. (Discussion and possible action.)
- IV. Possible Amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing: (1) committees formed to support or oppose bond measures placed on the ballot by the San Francisco Unified School District or the Community College District; (2) possible adoption of standards for presuming coordination between a candidate and a person making an expenditure; (3) moving the False Endorsements Ordinance into the CFRO; and (4) training for candidates and treasurers. At this meeting, the Commission will discuss and take public comment on various options and ideas. The Commission will not vote on these particular changes at the October 17 meeting. Any specific proposals will be presented to the Commission at the November 14 regular meeting for possible action. A staff memo will be available in the Commission office and on the Commission web site. (Discussion.)
- V. Consideration of Formal Advice Letter. Randall Knox, a member of the Board of Appeals, is an attorney and would like to represent a client in criminal proceedings. He has requested the Ethics Commission's advice regarding whether his representation of a criminal defendant would present any conflicts of interest under local law. A copy of the

draft staff letter will be available in the Commission office and on the Commission web site. (Discussion and possible action.)

VI. **Executive Director's Report.** An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)

VII. **Minutes of the regular Commission meeting of September 12, 2005 and the special Commission meeting of September 19, 2005.** (Discussion and possible action.)

VIII. **Commissioner questions and proposed future agenda items.**

a) **Inquiries to the Executive Director.** Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) **Items for future meetings.** Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)

IX. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

X. **Adjournment.**

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Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Adele Destro by mail to Interim Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at saff@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Destro or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>. The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317 and web site www.sfgov.org/ethics



(Approved 12/12/05)

Minutes of the Regular Meeting of the
San Francisco Ethics Commission
City Hall, One Dr. Carlton B. Goodlett Place, Room 408
October 17, 2005

DOCUMENTS DEPT.

I. Call to order and roll call.

JUN 27 2006

Chairperson Gusukuma called the meeting to order at 6:12 p.m.

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COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Waukeen McCoy, Vice-Chairperson; Joe Lynn, Commissioner; and Eileen Hansen, Commissioner. Absent: Michele Anglade, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; and Richard Mo, Legal Analyst/Investigator.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Kevin Heneghan, Sutton Law Firm; Anita Mayo, Pillsbury Winthrop; Stephanie Coogler; Kristian Ongoco; Charlie Marsteller; and David Pilpel.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting and available to public at the meeting:

Memo from Executive Director John St. Croix re: Possible Amendments to CFRO relating to supplemental reporting, mass mailing disclosure, candidate loan limits and late filing fees, October 12, 2005

Memo from Executive Director John St. Croix re: Possible Amendments to CFRO relating to miscellaneous provisions governing bond measures, coordination, false endorsements and training for candidates and treasurers, October 12, 2005

San Francisco Campaign and Governmental Conduct Code, Chapter One, June 2005

Los Angeles Municipal Code Section 49.7.26.1, Behested Expenditures

Memo from Executive Director re: Draft Formal Advice Letter relating to Randall Knox, October 6, 2005; Letter from Randall Knox re: Request for Formal Advice, August 16, 2005

Letter from Executive Director to Nielsen, Merksamer re: state major donors and filing requirements, October 11, 2005; Request for Advice from Nielsen Merksamer, September 26, 2005

Letter from Bank of America re: Request for Formal Advice, August 11, 2005; Letter from Peter Bagatelos re: Request for Informal Advice, September 15, 2005; Letter from Steven Lucas re: Request for Advice

Executive Director's Report for the Meeting of October 17, 2005

Draft Minutes of the Regular Meeting of September 12, 2005

Draft Minutes of the Special Meeting of September 19, 2005

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

III. Possible adoption of amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing: (1) supplemental campaign reporting; (2) disclosure and filing requirements for mass mailings and campaign advertisements; (3) limits on loans by candidates; and (4) late filing fees. Anticipated amendments affect sections that include: 1.135 (Supplemental Reporting); 1.161 ((Disclosure and Filing Requirements for Mass Mailings); 1.163.5 (new section: Disclosure Requirements – Campaign Advertisements); 1.116 (Limits on Loans from candidates); 1.170 (Late Filing Fees).

Executive Director John St. Croix stated that at the Commission meeting on September 19, 2005, the Commission discussed possible CFRO amendments relating to supplemental campaign reporting; disclosure and filing requirements for mass mailings and campaign advertisements; limits on loans by candidates; and late filing fees. Based upon the Commission's discussion at that meeting staff prepared a memo regarding possible amendments.

The Commissioners discussed the proposed amendments in staff's October 12, 2005 memo and took the following actions.

A. Supplemental Reporting

1. Section 1.135: Contribution Limits

Mr. St. Croix stated that Section 1.135 (formerly section 1.152) was originally adopted to address the problem that under State law, committees that made expenditures in San Francisco races were required to file pre-election statements only in even-numbered years. Because San Francisco holds certain elections in odd-numbered years, such as the election for Mayor, significant spending was not reported until after the election. Section 1.135 was drafted to authorize the Ethics Commission to capture reporting of spending in odd-numbered years.

The Commissioners discussed whether all county general purpose committees should be required to file these supplemental reports. The Commission considered exempting major donor and independent expenditure committees from the supplemental reporting requirements.

The Commissioners engaged in an extensive discussion regarding whether all county general purpose committees should be required to file these supplemental reports.

Public Comment:

David Pilpel made a few suggestions regarding the language of the proposed recommendation.

Charlie Marsteller stated that this was a historical moment because it closed a loophole that was created in 1997.

Anita Mayo, Pillsbury Winthrop, stated that although she generally agreed with staff's recommendation, state law limited the Commission's authority to county general purpose recipient committees. She stated that under state law, independent expenditure committees and major donor committees do not file pre-election reports.

Motion 05-10-17-1 (Hansen/Lynn): Moved, seconded and unanimously passed (4-0): that the Commission adopt staff's recommendation, as amended by the Commission to include all general purpose committees.

B. Section 1.161: Disclosure and Filing Requirements for Mass Mailings

1. Placement of Disclosure Requirement

Executive Director St. Croix explained that Section 1.161 requires that any mass mailing paid for by a candidate for City elective office must contain a "paid for by" statement identifying the name and street address of the candidate. Staff recommended adding language to clarify that the "paid for by" disclosure must be placed on the outside of each piece of mail in the mass mailing.

2. Filing Two Copies of the Mailing

Executive Director St. Croix stated that Section 1.161 requires candidates who pay for mass mailings to file an original or copy of the mailing with the Ethics Commission. Because only one copy is filed with the Commission, staff is required to make copies of each mailing to place in the public review area of the Commission's office. Staff recommended that the Commission require that candidates file two original copies of a mailing with the Commission.

3. Electronic Filing of Itemized Statement

Executive Director St. Croix stated that Section 1.161 requires candidates to file itemized disclosure statements regarding mass mailings. Candidates are currently required to file only paper copies of these statements. Staff recommended adding a new section to require candidates to file electronic copies of the itemized statements.

The Commissioners engaged in a brief discussion regarding staff's proposed amendments, including whether to require two original copies of the mass mailing and whether to change the five-day filing requirement to one day.

Public Comment:

Mr. Marsteller stated that the court would prefer two original copies of the mass mailing.

Mr. Pilpel made a few suggestions regarding the language of staff's proposal.

Motion 05-10-17-2 (Hansen/McCov): Moved, seconded and unanimously passed (4-0): that the Commission adopt staff's recommendation.

4. Extending the Disclosure Requirements to Other Campaign Materials

Executive Director St. Croix stated that Section 1.161 requires a "paid for by" disclosure only on mass mailings paid for by a candidate for City elective office. Other campaign materials, such as doorhangers, billboards and print and broadcast advertisements paid for by a candidate are not covered by the disclosure requirement. Staff recommended creating a new section to require a "paid for by" disclosure on campaign advertisements.

The Commission engaged in a brief discussion of staff's recommendation.

Public Comment:

Mr. Pilpel made a few comments regarding the language of staff's proposal.

Motion 05-10-17-3 (Lynn/McCov): Moved, seconded and unanimously passed (4-0): that the Commission adopt staff's recommendation.

C. Section 1.116: Limits on Loans to Candidates

Executive Director St. Croix stated that Section 1.116 limits the amount of money a candidate may loan to his or her own campaign. Staff recommended that the Commission adopt language which deems such loans as campaign contributions.

Public Comment:

None.

Motion 05-10-17-4 (Lynn/McCov): Moved, seconded and unanimously passed (4-0): that the Commission adopt staff's recommendation.

D. Late Filing Fees

1. Section 1.112: Electronic Campaign Disclosure

Executive Director St. Croix explained that the Commission recently voted to move the Electronic Filing Ordinance, Campaign and Governmental Conduct Code section 1.300 et. seq., into the Campaign Finance Reform Ordinance. The Electronic Filing Ordinance

currently imposes a late filing penalty of \$25 per day after a deadline until the electronic report is filed.

Staff recommended adding language to the late filing penalty provisions related to the Electronic Filing requirements in CFRO, to allow the Commission to reduce or waive a fee if the Commission determines that the late filing was not willful and that enforcement will not further the purpose of this chapter.

2. Late Filing Fees

Executive Director St. Croix explained that under the CFRO, the Commission serves as a filing officer for several different types of reports. When some of these reports are filed late, the law imposes a late filing penalty on the filer. But no late filing penalty exists for other reports. Staff recommended adding language to impose late filing fees for all reports required by CFRO.

3. Late Fees: Caps

Executive Director St. Croix explained that state law, which is incorporated into local law, imposes a ten dollar (\$10) per day late filing fee for certain reports that are filed with the Commission. These late filing fees are capped at the cumulative amount stated in the late report or \$100, whichever is greater. Staff recommended placing similar limits on the amount of liability a person may have for late filing of a statement or report. For paper reports, which have a \$10 per day late fee, the limit would be the cumulative amount stated in the report or \$100, whichever is greater. For electronic reports, the limit would be the cumulative amount stated in the report or \$250, whichever is greater.

The Commissioners engaged in a brief discussion regarding staff's proposed amendments. Commissioner Hansen inquired as to why the electronic filing fine was \$25/day and the paper fine was only \$10/day and proposed that the paper fine be raised to \$25/day. Executive Director St. Croix stated that he would research this suggestion.

Public Comment:

Mr. Marsteller stated that the \$10 per day fine originated in 1974 with the PRA and that the Commission should look to Proposition K for authority to index the fine amount according to inflation.

Mr. Pilpel stated that he supported staff's recommendation, except for language regarding the cumulative limitation on liability.

Motion 05-10-17-5 (Lynn/Hansen): Moved, seconded and unanimously passed (4-0): that the Commission adopt staff's recommendation.

IV. Possible Amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing: (1) committees formed to support or oppose bond measures placed on the ballot by the San Francisco Unified School District or the Community College District; (2) possible adoption of standards for presuming coordination between a candidate and a person making an expenditure; (3) moving the False Endorsements Ordinance into the CFRO; and (4) training for candidates and treasurers.

Executive Director St. Croix stated that the purpose of this agenda item was to obtain guidance from the Commission regarding CFRO amendments related to committees formed to support or oppose bond measure placed on the ballot by the school district or the community college district; presumption of coordination between a candidate and person making an expenditure; moving the False Endorsements Ordinance into CFRO; and mandatory training for candidates and treasurers. The Commissioners discussed the proposed amendments in staff's October 12, 2005 memo, as follows.

A. Regulating Committees Formed to Support or Oppose Measures Placed on the Ballot by the Community College District and the Unified School District

The Commissioners engaged in a discussion regarding the following: whether the Commission should amend CFRO to extend its provisions to committees that are formed to support or oppose measures placed on the ballot by the San Francisco Community College District and the San Francisco Unified School District.

All four Commissioners indicated support for such an amendment.

Public Comment:

Mr. Pilpel stated that because the Commission regulates candidates for these offices, this amendment was a logical extension.

Mr. Marsteller stated that there may be legal concerns regarding this amendment and that the Commission should consult with the City Attorney's Office before taking any action.

B. Coordination

The Commissioners engaged in a discussion regarding the following: whether the Commission adopt additional criteria for presumed coordination between a candidate and a person making an expenditure.

Commissioners Gusukuma, Hansen and Lynn indicated support for such an amendment.

Deputy City Attorney Chad Jacobs thanked Stephanie Coogler, an intern and student at Hastings College of the Law, for her research on this issue.

Public Comment:

Mr. Marsteller stated that it was possible for a candidate to use the same treasurer throughout the whole process.

Ms. Mayo stated that state law provides ample guidance regarding this issue.

Mr. Pilpel stated that it would depend on the goal of the law.

C. False Endorsements Ordinance

The Commissioners engaged in a discussion regarding the following: 1) whether the Commission should move the False Endorsements Ordinance into CFRO; 2) if yes, whether the Commission should make such changes as necessary so that the provisions in CFRO related to definitions, penalties and severability apply; and 3) if yes, whether the Commission should retain the notice period of section 1.415 related to restraining orders or injunctive relief.

All four Commissioners indicated support for such amendments. Commissioner Lynn suggested including electronic media in the False Endorsements Ordinance. Chairperson Gusukuma agreed with his suggestion.

Public Comment:

None.

D. Training for Candidates and Treasurers

The Commissioners engaged in a discussion regarding the following: whether the Commission should require that candidates and the treasurers of their controlled committees undergo training conducted or sponsored by the Ethics Commission prior to the election at which the candidate's name will appear on the ballot.

Commissioner Lynn expressed an interest in including all treasurers and not just treasurers for candidate committees. The Commissioners also discussed methods of enforcing the training requirement.

All four Commissioners indicated support for such amendments.

Public Comment:

Mr. Pilpel stated that the Commission should focus on smaller and mid-sized committees.

- V. Consideration of Formal Advice Letter.** Randall Knox, a member of the Board of Appeals, is an attorney and would like to represent a client in criminal proceedings. He has requested the Ethics Commission's advice regarding whether his representation of a criminal defendant would present any conflicts of interest under local law.

The Commissioners engaged in an extensive discussion regarding staff's draft advice letter. Specifically, the Commissioners focused on the omission of communications with the District Attorney's Office in the list of attorney communications in the compensated advocacy ban, and whether this omission was intentional or an oversight. *S.F. C&GCC Code § 3.224(b)*. The Commissioners raised concerns about the draft advice letter. Although they agreed with staff's conclusion, they did not agree with staff's analysis. In addition, the Commission expressed an interest in amending the law to include the District Attorney's Office in the list of attorney communications in the compensated advocacy ban.

Executive Director St. Croix stated that staff would redraft the advice letter.

Public Comment:

Mr. Pilpel stated that the Commission needed to look at the broader ethics issues and that a member of the Board of Appeals should not sit on that panel while representing an employee of that department in a criminal matter.

Mr. Marsteller stated that this particular defendant has serious issues before him.

The Commission went into recess at 8:08 p.m. At 8:18 p.m., the Commission reconvened.

VI. Executive Director's Report.

Executive Director St. Croix highlighted the following: 1) he would begin interviewing candidates for the new auditor position next week; 2) staff would begin sending copies of pending advice letters to the Commissioners; 3) the October 15, 2005 retreat was informative and educational; and 4) he expected the CFRO amendment process to wrap up in December, after which time the Commission will shift its focus to completing the Statements of Incompatible Activities and its review of the enforcement program.

Commissioners Lynn and Hansen both asked questions of the Executive Director relating to the Executive Director's Report.

Public Comment:

Mr. Marsteller inquired about the status of the campaign finance database and the lobbyist database.

Mr. Pilpel inquired about the status of the audit program.

VII. Minutes of the regular Commission meeting of September 12, 2005 and the special Commission meeting of September 19, 2005.

Minutes of September 12, 2005

Public Comment:

Mr. Pilpel stated that with regards to roll call, the Commission should use the term “absent and excused” rather than “excused.”

Motion 05-10-17-6 (Lynn/McCoy): Moved, seconded, and passed (4-0): that the Commission approve the minutes of the regular meeting of September 12, 2005.

Minutes of September 19, 2005

Commissioner Lynn made the following suggested amendments:

- 1) Add the following sentence to the paragraph under 1.128: Lifting of Limits: “Staff assured that the proposal would not affect the ability of candidates to qualify for public financing.”
- 2) Delete and add the following language to the first line of the paragraph under Section VIII, as follows: “Commissioner Lynn stated the following: 1) the Commission should reach out to the poor communities and **ask them why they do not participate in** ~~educate them about~~ the voting process.”

Public Comment:

Mr. Pilpel stated that with regards to roll call, the Commission should use the term “absent and excused” rather than “excused.”

Motion 05-10-17-6 (Lynn/McCoy): Moved, seconded, and passed (4-0): that the Commission approve the minutes of the special meeting of September 19, 2005, as amended.

VIII. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

Chairperson Gusukuma stated that she would like the following items considered for future agendas: 1) amending section 1.135 during the December CFRO cleanup; 2) amending

section 1.163.5 regarding the double-negative language during the December CFRO cleanup; and 3) consideration of amending section 1.170 to raise late fees for paper filing from \$10/day to \$25/day.

Commissioner Lynn stated that he would like following items considered for future agendas: 1) cleanup SEI language regarding the Public Defender; 2) report from the Executive Director regarding staff training; 3) complaints barred by the statute of limitations; 4) adding the Treasure Island Development Authority and the Port to laws under the Commission's jurisdiction; and 5) the City Attorney and public advice regarding the Barron case.

Commissioner Hansen stated that she would like following items considered for future agendas: 1) the list of SEIs in the Executive Director's Report; and 2) discussion of Proposition C, after the November election.

Public Comment:

Mr. Marsteller stated that TIDA and the Port, as well as a number of other agencies, derive their power from state law.

IX. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

X. Adjournment.

Motion 05-10-17-8 (Lynn/McCoy): Moved, seconded and unanimously passed (4-0): that the Commission adjourn.

The meeting was adjourned at 9:31 p.m.

Respectfully submitted,

Richard Mo
Legal Analyst/Investigator



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EMI GUSUKUMA
CHAIRPERSON

LAUREN Q. MCCOY
VICE-CHAIRPERSON

MICHELE ANGLADE
COMMISSIONER

EILEEN HANSEN
COMMISSIONER

JOE LYNN
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: November 9, 2005

To: Members, Ethics Commission

From: John St. Croix, Executive Director

Re: Proposed Amendments re Bond Measures, Coordination, Etc.

INTRODUCTION

At the Commission meeting on October 17, 2005, the Commission agreed to move forward with discussion and possible action on a number of proposals to amend the Campaign Finance Reform Ordinance ("CFRO"). This memorandum sets forth the possible amendments discussed and summarizes the issues presented.

Note: The Ethics Commission has already adopted several amendments to CFRO, some of which are currently pending at the Board of Supervisors, but have not yet been adopted. In the sections below, ~~double strikethrough~~ and double underline indicates the amendments already adopted by the Commission. Single *italics* and single ~~strikethrough italics~~ indicate the new proposals.

DISCUSSION

A. Section 1.161 – Time for Filing Itemized Statements

Under the law, a candidate who pays for a mass mailing must place a "paid for by" statement on the mailing and file an itemized disclosure statement with the Ethics Commission within five (5) working days of the date of the mailing. At its last meeting, the Commission considered and adopted language to amend section 1.161 to clarify that the "paid for by" disclosure be placed on the outside of each piece of mass mailing; that a candidate who pays for a mass mailing file two original copies of a mailing with the Commission; and that the Commission is authorized to require electronic copies of itemized disclosure statements.

A question was raised whether the Commission should require an itemized disclosure statement to be filed within 24 hours if the mass mailing is made during the last 16 days before the election. Staff has drafted language to accomplish this under subsection (b)(3), below. The itemized disclosure statements require candidates to provide

information regarding the separate costs associated with the mailing, such as photography, design, production, distribution, postage and other costs.

When the legislation was first enacted, the time period to file the itemized disclosure statement was two days; the Board of Supervisors amended the law to make it five days. In the last days of an election, when campaign activity is especially frenzied, candidates may not be able to gather this information and report it within 24 hours of sending out the mass mailing. Instead, most candidates will probably only have estimates of the costs and thus must file amendments to the statements (within 48 hours after they receive accurate information regarding the actual costs). Thus, staff believes that while a 24-hour filing requirement may result in more filings, such filings would not necessarily be accurate or helpful to the electorate. *For these reasons, staff does not recommend that the Commission adopt the proposed amendment.*

SEC. 1.161. DISCLOSURE AND FILING REQUIREMENTS FOR MASS MAILINGS.

(a) DISCLOSURE.

In addition to the requirements set forth in California Government Code Section 84305, each mass mailing paid for by a candidate for City elective office shall include on the outside of each piece of mail in the mass mailing the following statement in not less than 14 point type and in a color or print which contrasts with the background so as to be easily legible: "paid for by _____ (insert candidate's name and street address)." A post office box may be stated in lieu of a street address if the candidate's address is a matter of public record with the San Francisco Ethics Commission.

(b) FILING.

(1) Each candidate for City elective office who pays for a mass mailing shall, within five working days after the date of the mailing, file two of the original pieces an original or copy of the mailing with the San Francisco Ethics Commission.

(2) Each candidate for City elective office who pays for a mass mailing shall, within five working days after the date of the mailing, file an itemized disclosure statement with the San Francisco Ethics Commission for that mailing.

(3) A candidate for City elective office shall file the original pieces of mail and the itemized disclosure statement required by subsections (b)(1) and (b)(2) within 24 hours of the date of the mailing if the date of the mailing occurs within the 16 days before an election.

(3)(4) Every original ~~or copy~~ filed pursuant to this subsection shall be clearly legible.

(4)(5) The Ethics Commission may require that the itemized disclosure statements required by this Section be filed electronically.

(c) DEFINITIONS.

(1) For the purposes of this section, "Itemized disclosure statement" shall mean a detailed description of the separate costs associated with a mass mailing, including but not limited to photography, design, production, printing, distribution and postage. Each cost shall be disclosed on a form promulgated by the San Francisco Ethics Commission in a manner that demonstrates each separate charge or payment for each mass mailing.

(2) For the purposes of this section, "Mass mailing" shall be defined as set forth in the California Political Reform Act (Government Code Sections 81000 et seq.), provided that the mass mailing is paid for by a candidate for City elective office with funds raised

for the candidate's campaign, and that the mass mailing advocates for or against candidates for City elective office.

B. Section 1.170 – Late Filing Fee Amounts

At its last meeting, the Commission adopted legislation to impose late filing fees for all reports required by CFRO. The late filing fees adopted are \$10 per day after the deadline until a paper report is filed, or \$25 per day after the deadline until an electronic report is filed. A suggestion was made that the Commission consider raising the \$10 per day late paper fee to \$25. The proposed change is set forth below in section 1.170(d)(1).

Staff believes that a change to \$25 would generate administrative complexity and not necessarily lead to greater compliance with the law. The Commission serves as filing officer for many campaign finance reports where the filing requirements are set out in the Political Reform Act (“PRA”) and incorporated into local law under CFRO section 1.106. Under the PRA, the fee for late paper reports is \$10 per day after the deadline until the report is filed, up to the amount of activity stated in the report or \$100, whichever is greater. Cal. Gov’t Code § 91013. Staff proposed that the fee for late reports required by CFRO be \$10 per day to be consistent with the state late fee, which would be easy to administer. If the Commission adopted a \$25 late fee for reports required by CFRO, staff would need to determine the status of the filer in order to impose the appropriate fine. For example, a candidate who runs for county central committee and arguably any state committee would be subject only to the \$10 late fee while candidates for City elective office and local committees would be subject to a \$25 late fee.

In addition, staff is not persuaded that a \$25 fine would necessarily result in greater compliance. In FY 03-04, the fines for late lobbyist reports increased from \$25 per day to \$50 per day. In FY 01-02 and FY 02-03, when late fines were \$25 per day, the Commission collected \$4,675 and \$1,125 in late fines, respectively. This translates to 187 late days in FY 01-02, down to 45 late days in FY 02-03. In FY 03-04 and FY 04-05, when late fines increased to \$50 per day, the Commission collected \$2,800 and \$1,000, respectively. This translates to 56 late days in FY 03-04, down to 20 late days in FY 04-05. The number of late days thus increased slightly when fees were raised and decreased most dramatically when there was not change in fees. Staff believes that the information does not show that changes in fees were responsible for changes in timeliness. Other factors, such as education and familiarity with the law, may have been responsible. Staff believes that the information is not sufficient to show that greater fines result in greater timely compliance.

For these reasons, staff recommends that the Commission not change the \$10 per day late fee.

SEC. 1.170. PENALTIES.

(a) CRIMINAL.

Any person who knowingly or willfully violates any provision of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$5,000 for each violation or by imprisonment in the County jail for a period of not more than six months or by both such fine and imprisonment; provided, however, that any willful or knowing failure to report contributions or expenditures done

with intent to mislead or deceive or any willful or knowing violation of the provisions of Section 1.114 of this Chapter shall be punishable by a fine of not less than \$5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Section 1.114 of this Chapter, or three times the amount expended in excess of the amount allowable pursuant to Section 1.130, whichever is greater.

(b) CIVIL.

Any person who intentionally or negligently violates any of the provisions of this Chapter shall be liable in a civil action brought by the civil prosecutor for an amount up to \$5,000 for each violation or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Section 1.114 or three times the amount expended in excess of the amount allowable pursuant to Section 1.130, whichever is greater.

(c) ADMINISTRATIVE.

Any person who intentionally or negligently violates any of the provisions of this Chapter shall be liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation, or three times the amount not reported or the amount received in excess of the amount allowable pursuant to Section 1.114 or three times the amount expended in excess of the amount allowable pursuant to Section 1.130, whichever is greater.

(d) LATE FILING FEES

(1) Fees for Late Paper Filings. In addition to any other penalty, any person who files a paper copy of any statement or report after the deadline imposed by this Chapter shall be liable in the amount of ~~ten dollars (\$10)~~ twenty-five dollars (\$25) per day after the deadline until the statement is filed.

(2) Penalties Fees For Late Electronic Filings. In addition to any other penalty, any person who files an electronic copy of a statement or report required by this Chapter after the deadline imposed by this Chapter the California Political Reform Act (Government Code Section 81000 et seq.) for filing the written copy of the statement or report shall be liable in the amount of twenty-five dollars (\$25) per day after the deadline until the electronic copy is filed.

(3) Limitation on Liability. Liability imposed by subsection (d)(1) shall not exceed the cumulative amount stated in the late statement or report, or one hundred dollars (\$100), whichever is greater. Liability imposed by subsection (d)(2) shall not exceed the cumulative amount stated in the late statement or report, or two hundred and fifty dollars (\$250), whichever is greater.

(4) Reduction or Waiver. The Ethics Commission may reduce or waive a fee imposed by this subsection if the Commission determines that the late filing was not willful and that enforcement will not further the purposes of this Chapter.

~~++~~ (e) MISUSE OF PUBLIC FUNDS.

Any person who willfully or knowingly uses public funds, paid pursuant to this Chapter, for any purpose other than the purposes authorized by this Chapter shall be subject to the penalties provided in this Section.

~~++~~ (f) PROVISION OF FALSE OR MISLEADING INFORMATION TO THE ETHICS COMMISSION; WITHHOLDING OF INFORMATION.

Any person who knowingly or willfully furnishes false or fraudulent evidence, documents, or information to the Ethics Commission under this Chapter, or misrepresents any material fact, or conceals any evidence, documents, or information, or fails to furnish to the Ethics Commission any records, documents, or other information required to be provided under this Chapter shall be subject to the penalties provided in this Section.

~~++~~ (g) PERSONAL LIABILITY.

Candidates and treasurers are responsible for complying with this Chapter and may be held personally liable for violations by their committees.

~~(g)~~ (h) JOINT AND SEVERAL LIABILITY.

If two or more persons are responsible for any violation of this Chapter, they shall be jointly and severally liable.

~~##~~ (i) EFFECT OF VIOLATION ON OUTCOME OF ELECTION.

If a candidate is convicted of a violation of this Chapter at any time prior to his or her election, his or her candidacy shall be terminated immediately and he or she shall be no longer eligible for election, unless the court at the time of sentencing specifically determines that this provision shall not be applicable. No person convicted of a misdemeanor under this Chapter after his or her election shall be a candidate for any other City elective office for a period of five years following the date of the conviction unless the court shall at the time of sentencing specifically determine that this provision shall not be applicable. A plea of nolo contendere shall be deemed a conviction for purposes of this Section.

C. Section 1.104 – Definition of Measure

At the last meeting, the Commission indicated support for a proposal to amend the definition of “measure” in CFRO so that committees formed to support or oppose bond measures placed on the ballot by the Community College District (“District”) or San Francisco Unified School District (“SFUSD”) are subject to all provisions of the CFRO. As discussed previously, CFRO governs the election of candidates to the boards of the SFUSD and the District. In addition, committees formed to support or oppose measures placed on the ballot by the SFUSD or District file their campaign disclosure statements with the Ethics Commission, but such committees are not governed by CFRO. The proposed amendment would fix this inconsistency.

The amendment would redefine “measure” so that committees formed to support or oppose measures placed on the ballot by the District or SFUSD are subject to the same laws that govern other committees active in San Francisco, including enforcement and audit activity by the Commission.

SEC. 1.104. DEFINITIONS.

Whenever in this Chapter the following words or phrases are used, they shall mean:

~~(j)~~ (k) “Measure” shall mean any City, *San Francisco Unified School District or San Francisco Community College District* referendum, recall or ballot proposition, whether or not it qualifies for the ballot.

D. New Section 1.107 – Training Requirements for Candidates and Treasurers

The following new language imposes a training requirement for candidates for City elective office and all treasurers of recipient committees that are required to file semi-annual statements with the Ethics Commission. At the last meeting, staff recommended and the Commission agreed that training would be helpful to candidates and treasurers to make them aware of their filing obligations under the PRA and CFRO. In addition, such training would cover various provisions of CFRO that appear to present difficulties to candidates, such as the loan limits and the use of campaign funds. Requiring candidates and treasurers to attend trainings would likely reduce the instances of non-filing and non-compliance with the law.

Under the proposal, all candidates for City elective office and their treasurers must attend an Ethics Commission training, which staff anticipates will occur during the week after the last day to file nomination papers in August. All other treasurers must attend the next training offered by the Commission after the committee files either its original statement of organization or an amendment to a statement of organization designating a new treasurer.

SEC. 1.107. TRAINING FOR CANDIDATES AND TREASURERS

(a) Training Requirements.

(1) Candidates. *Every candidate for City elective office and their treasurers shall attend a training program conducted or sponsored by the Ethics Commission prior to each election at which the candidate's name will appear on the ballot.*

(2) Treasurers. *Every committee treasurer shall attend the next training program conducted or sponsored by the Ethics Commission after the date the committee files either its original statement of organization or an amendment to a statement of organization designating a new treasurer.*

(b) Exception. *An individual who serves as the treasurer for more than one committee is not required to attend a training required by subsection (a) if that individual has attended such a training within the previous 12 months.*

(c) Definition. *For the purposes of this section, "committee" shall mean any committee other than a candidate's campaign committee that: (1) qualifies as a committee pursuant to subdivision (a) of Section 82013 of the California Government Code as incorporated into this Chapter by Section 1.104; and (2) is required to file its semi-annual campaign statements with the Ethics Commission.*

E. Section 1.100 and new Section 1.163.5 – Incorporating False Endorsements Ordinance

At its last meeting, the Commission recommended moving the False Endorsements Ordinance, S.F. C&GC Code section 1.400 et seq., into CFRO. The Commission also suggested that the Ordinance be expanded to apply to electronic media. The following language accomplishes these purposes.

Language from section 1.400,¹ which sets forth the purpose of the Ordinance, has been modified slightly and moved into section 1.100, which sets forth the purpose and intent of CFRO.

¹ Section 1.400 states: Campaign literature that falsely represents the endorsement of current and former public officials, candidates, political clubs, and organizations has been distributed in recent local elections. These false representations undermine the integrity of the electoral process by misleading and confusing voters about the actual support for or opposition to candidates or ballot measures. It is too burdensome for individual voters, inundated with campaign messages, to verify the accuracy of such claims and for persons whose positions are misrepresented to correct the misrepresentations. Prohibiting knowingly false representations in campaign literature during the limited period when effectively responding to them is most difficult will serve the City's paramount interest in ensuring the integrity of the electoral process.

Language from section 1.410,² which sets forth the prohibition, is restated at section 1.163.5, with the exception that the phrase “campaign literature” is replaced with the phrase “campaign advertisement.” This change is made to reflect that the false endorsements ban will apply not only to written campaign material but also to other forms of campaign advertisements such as broadcasts.

A new subsection defining “campaign advertisement” in section 1.163.5(b)(1) is included. This language incorporates language in section 1.405(a)³ defining “campaign literature” and expands the definition to include other kinds of advertisements, drawing on similar provisions from section 1.161.5 relating to electioneering communications. A new subsection (b)(2) defining “internet advertisement” is derived from the definition of “internet communication” under section 1.161.5. Subsection (b)(3) carries forth the definitions of “sponsor” and “voter” from the False Endorsements Ordinance.

The penalties section makes clear that the criminal penalties of CFRO do not apply to this section of CFRO. Under existing law, the only remedy is an injunction and a \$5,000 civil penalty. With respect to restraining orders and injunctions, the 60-day notice period of section 1.168(b) also does not apply, and an injunction may be granted based on clear and convincing evidence. Because a violation of the False Endorsement Ordinance can occur only within the last 90 days before an election, requiring 60 days’ notice would not serve the purposes of the law.

SEC. 1.100. PURPOSE AND INTENT.

* * *

(b) It is the purpose and intent of the People of the City and County of San Francisco in enacting this Chapter to:

* * *

(8) Assist voters in making informed electoral decisions and ensure compliance with campaign contribution limits through the required filing of campaign statements detailing the sources of campaign contributions and how those contributions have been expended;

(9) Make it easier for the public, the media and election officials to efficiently review and compare campaign statements by requiring committees that meet certain financial thresholds to file copies of their campaign statements on computer diskettes or other designated electronic media; and

² Section 1.410 states: No person may sponsor any campaign literature that is distributed within 90 days prior to an election and that contains a false endorsement, where the person acts with knowledge of the falsity of the endorsement or with reckless disregard for the truth or falsity of the endorsement. A false endorsement is a statement, signature, photograph, or image representing that a person endorses support of or opposition to a candidate or measure when in fact the person does not endorse support of or opposition to the candidate or measure as stated or implied in the campaign literature.

³ Section 1.405(a) states: Campaign literature. The term “campaign literature” includes but is not limited to any flyer, door hanger, pamphlet, brochure, card, billboard, or advertisement urging support for or opposition to one or more candidates or ballot measures. The term “campaign literature” does not include bumper stickers, pins, stickers, hat bands, badges, ribbons and other similar campaign memorabilia.

(8) (10) Help restore public trust in governmental and electoral institutions.

(11) Help ensure the integrity of the election process by prohibiting campaign advertisements that contains knowing false endorsements of current and former public officials, candidates, political clubs, and organizations. Such false endorsements undermine the integrity of the electoral process by misleading and confusing voters about the actual support for or opposition to candidates or ballot measures and it is too burdensome for individual voters, inundated with campaign messages, to verify the accuracy of such claims and for persons whose positions are misrepresented to correct the misrepresentations close in time to the election.

(c) This Chapter is enacted in accordance with the terms of Sections 5 and 7 of Article XI of the Constitution of the State of California and Section 1.101 of the Charter of the City and County of San Francisco.

SEC. 1.163.5. DISTRIBUTION OF CAMPAIGN ADVERTISEMENTS CONTAINING FALSE ENDORSEMENTS.

(a) Prohibition. No person may sponsor any campaign advertisement that is distributed within 90 days prior to an election and that contains a false endorsement, where the person acts with knowledge of the falsity of the endorsement or with reckless disregard for the truth or falsity of the endorsement. A false endorsement is a statement, signature, photograph, or image representing that a person endorses support of or opposition to a candidate or measure when in fact the person does not endorse support of or opposition to the candidate or measure as stated or implied in the campaign advertisement.

(b) Definitions. Whenever in this section the following words or phrases are used, they shall mean:

(1) "Campaign advertisement" is any mailing, flyer, doorhanger, pamphlet, brochure, card, sign, billboard, facsimile, printed advertisement, broadcast, cable, satellite, radio, internet, or recorded telephone advertisement urging support for or opposition to one or more candidates or ballot measures. The term "campaign advertisement" does not include:

(A) bumper stickers, pins, stickers, hat bands, badges, ribbons and other similar campaign memorabilia;

(B) news stories, commentaries or editorials distributed through any newspaper, radio, station, television station or other recognized news medium unless such news medium is owned or controlled by any political party, political committee or candidate; or

(C) material distributed to all members, employees and shareholders of an organization, other than a political party;

(2) "Internet advertisement" includes paid internet advertisements such as "banner" and "pop-up" advertisements, paid emails, or emails sent to addresses purchased from another person, and similar types of internet advertisements as defined by the Ethics Commission by regulation, but shall not include web blogs, listserves sent to persons who have contacted the sender, discussion forums, or general postings on web pages.

(3) "Sponsor" means to pay for, direct, supervise or authorize the production of campaign advertisement and the term "voter" means a voter registered to vote in San Francisco.

(c) Enforcement and penalties. The penalties under section 1.170(a) of this Chapter do not apply to violations of this section. Notwithstanding the 60-day waiting period in section 1.168 of this Chapter, a voter may bring an action to enjoin a violation of this section

immediately upon providing notice to the City Attorney. A court may enjoin a violation of this section only upon a showing of clear and convincing evidence of a violation.

F. New section 1.115 - Coordination

In *Buckley v. Valeo*, 424 U.S. 1 (1976), the United States Supreme Court held that government efforts to regulate campaign *expenditures* would be subject to a stricter level of scrutiny than government efforts to regulate campaign *contributions*. This distinction was based in part on the view that an expenditure is a more direct form of speech than a contribution and that an expenditure made independently of a candidate does not implicate the same governmental interests in preventing corruption or the appearance of corruption that large contributions present. An expenditure made independently of a candidate, the argument ran, may not help, and may in fact undermine, a candidate. At the same time, however, the Court stated that a campaign expenditure that was *coordinated* with a candidate did implicate the same governmental interests as contributions, could be treated as a contribution to the candidate, and therefore could be subject to greater regulation.

Under current State law, as incorporated into local law, expenditures "made at the behest" of a candidate or committee are considered coordinated with a candidate or committee that the expenditure benefits. 2 CCR § 18225.7 (defining "made at the behest of"). But under State law, a determination that an expenditure was made at the behest of a candidate does not conclusively establish that the expenditure is a contribution, 2 CCR § 18225.7(f), except as provided in regulation 2 CCR § 18550.1, which governs expenditures related to State candidates. *See also* Gov't Code § 82015 (defining contribution).

The Commission has indicated an interest in amending local law to identify circumstances in which a coordinated expenditure will be *presumed* to be a contribution to the candidate it benefited. Staff has reviewed laws relating to coordination from other jurisdictions including the federal government, Los Angeles, New York, and Seattle, as well as the State's regulations for State candidates. Based on that research, staff proposes a new provision for CFRO based on the State's regulation defining coordination for reporting expenditures related to State candidates. 2 CCR § 18550.1 (copy attached). This regulation presumes coordination for specified circumstances for expenditures related to State candidates. Staff's proposal would adopt a similar rule for local candidates.

Staff has also drawn on the Los Angeles law governing coordination to simplify some of the wording of the State regulation, by for example, adopting the term "spender" instead of "person making the expenditure." (A copy of the Los Angeles provision is attached.) Staff has not generally proposed adopting the Los Angeles presumptions that differ from State law. Many of the Los Angeles provisions appear to be covered by the more general State law provisions, to be of uncertain scope, or to the extent the exceptions are different, risk purporting to exempt activity that would be covered by the State law. Staff did expand section (b)(3) to cover one circumstance covered by the Los Angeles ordinance -- that of a person who provided professional services to a campaign, and later in the same election leaves and is retained by the spender to provide the same services. (Los Angeles Municipal Code § 49.7.26.1(B)(6).) Section

(b)(5) also addresses another circumstance covered by Los Angeles's ordinance -- when the spender or the spender's agent was an executive or policymaking official for the candidate or committee in the same election and the expenditure relates to the same office. These additions are noted in bold below.

SEC. 1.115. COORDINATION OF EXPENDITURES

(a) General. An expenditure is not considered independent and shall be treated as a contribution from the person making the expenditure to the candidate on whose behalf, or for whose benefit the expenditure is made, if the expenditure funds a communication that expressly advocates the nomination, election or defeat of a clearly identified candidate and is made under the following circumstance:

(1) the expenditure is made at the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with, the candidate on whose behalf, or for whose benefit, the expenditure is made; or

(2) the communication funded by the expenditure is created, produced or disseminated:

(A) after the candidate has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication; or

(B) after discussion between the creator, producer or distributor of a communication, or the person paying for that communication, and the candidate or committee regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is agreement on any of these topics.

(b) Rebuttable presumption of coordination. In addition to subsection (a) of this section, there shall be a presumption that an expenditure funding a communication that expressly advocates the nomination, election or defeat of a clearly identified candidate is not independent of the candidate on whose behalf or for whose benefit the expenditure is made, when:

(1) it is based on information about the candidate or committee's campaign needs or plans provided to the spender by the candidate;

(2) it is made by or through any agent of the candidate in the course of the agent's involvement in the current campaign;

(3) the spender retains the services of a person who provides, **or has provided**, the candidate with professional services related to campaign or fundraising strategy for that same election;

(4) the communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate; or

(5) in the same election that the expenditure is made, the spender or spender's agent is serving or served in an executive or policymaking role for the candidate's campaign or participated in strategy or policy making discussions with the candidate's campaign relating to the candidate's pursuit of election to office and the candidate is pursuing the same office as a candidate whose nomination or election the expenditure is intended to influence.

(c) Exceptions. Notwithstanding the foregoing, an expenditure shall not be considered a contribution to a candidate merely because:

(1) the spender interviews a candidate on issues affecting the spender;

(2) the spender has obtained a photograph, biography, position paper, press release, or similar material from the candidate;

(3) the spender has previously made a contribution to the candidate;

(4) the spender makes an expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion with the candidate prior to the expenditure relating to details of the expenditures;

(5) the spender has invited the candidate or committee to make an appearance before the spender's members, employees, shareholders, or the families thereof, provided that there is no discussion with the candidate prior to the expenditure relating to details of the expenditure;

(6) the spender informs a candidate that the spender has made an expenditure provided that there is no other exchange of information not otherwise available to the public, relating to the details of the expenditure; or

(7) the expenditure is made at the request or suggestion of the candidate for the benefit of another candidate or committee.

(d) Definition. For purposes of this section, the terms "candidate" includes an agent of the candidate when the agent is acting within the course and scope of the agency.

Ethics Commission



30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
November 14, 2005, 5:30 P.M.
and AGENDA**

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1 Dr. Carlton B. Goodlett Place, San Francisco

- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Request for waiver from Campaign and Governmental Code section 3.224 (compensated advocacy ban). Lucia Bogatay, a sole-practitioner licensed architect who serves on the Unreinforced Masonry Building Appeals Board ("UMBAB"), has requested a waiver that would allow her to represent private parties before other City officers and employees as part of her duties as an architect while serving on the UMBAB. A staff report is available at the office and on the Commission web site. (Discussion and possible action.)
- IV. Possible adoption of amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to address issues regarding: (1) committees formed to support or oppose measures placed on the ballot by the San Francisco Unified School District or the Community College District; (2) standards for presuming coordination between a candidate and a person making an expenditure; (3) moving the False Endorsements Ordinance into the CFRO; (4) training for candidates and treasurers; (5) timelines for filing mass mailing statements in the last 16 days of an election; and (6) increasing the late fine for paper filings from \$10 to \$25 per day. A staff memo including anticipated amendments will be available at the Commission office and on the Commission web site. (Discussion and possible action.)
- V. Possible Amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing issues related to public financing of candidates, including extending the public finance program to other City offices beyond the Board of Supervisors; funding options for the Election Campaign Fund; administrative adjustments to disbursement of funds; issues related to spending caps, use of unexpended funds, sources of matching contributions, and audits. At this meeting, the Commission will discuss and take public comment on various options related to these topics. The Commission will not vote on these particular changes at the November 14 meeting. Any specific proposals will be presented to the Commission at the December 19 regular meeting for possible action. A staff memo will be available in the Commission office and on the Commission web site. (Discussion.)

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- VI. Consideration of Formal Advice Letter. Randall Knox, a member of the Board of Appeals, is an attorney and would like to represent a client in criminal proceedings. He has requested the Ethics Commission's advice regarding whether his representation of a criminal defendant would present any conflicts of interest under local law. A copy of the draft staff letter will be available in the Commission office and on the Commission web site. (Discussion and possible action.)
- VII. Proposition C and budgetary issues. Discussion the outcome of Proposition C, which the voters rejected on Tuesday, November 8 and the merits of requesting an audit of the Commission to determine needs for appropriate staff levels. (Discussion and possible action.)
- VIII. Amendment to the Compensated Advocacy Ban. There are exemptions in the Compensated Advocacy Ban for licensed attorneys to contact city lawyers in the course of representing their clients. This amendment to the Campaign and Governmental Conduct Code section 3.224 would clarify that the exemption applies to the City Attorney's Office, the District Attorney's Office, the Public Defender's Office, attorneys in the Tax Collector's Office and the Sherriff's Office and others. A memo discussing the issue is available at the Commission Office and on the Commission web site. (Discussion and possible action.)
- IX. Amendment to the Conflict of Interest Code. Candidates for most citywide offices must file a Statement of Economic Interests with the Department of Elections. These offices include candidates for Mayor, Board of Supervisors, District Attorney, City Attorney and Treasurer. This amendment to the Campaign and Governmental Conduct Code section 3.1-100 et seq. would extend that requirement to candidates for Sheriff, Assessor, Public Defender, the Board of Education and the Community College Board. A memo discussing the issue is available at the Commission Office and on the Commission web site. (Discussion and possible action.)
- X. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting. (Discussion.)
- XI. Minutes of the monthly Commission meeting of October 17, 2005 and the special Commission meeting (retreat) of October 15, 2005. (Discussion and possible action.)
- XII. Commissioner questions and proposed future agenda items.
- a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.
 - b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items. (Discussion.)
- XIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

XIV. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance, District Attorney, City Attorney and Treasurer. This amendment would extend that requirement to candidates for Sheriff, Assessor, Public Defender, the Board of Education and the Community College Board. A memo discussing the issue is available⁵⁴; or by email at suff@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Destro or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>. The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

This location is wheelchair accessible. In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity, or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City accommodate these individuals.

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Governmental Conduct, Code § 2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at 30 Van Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317 and web site www.sfgov.org/ethics

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SF Ethics Commission

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November 14, 2005

(Approved as amended 01/09/06)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

November 14, 2005

I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 5:45 p.m.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Joe Lynn, Commissioner; Eileen Hansen, Commissioner; Michele Anglade, Commissioner (arrived 5:58 p.m.); and Waukeen McCoy, Vice-Chairperson (arrived 6:14 p.m.)

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Legal Analyst/Investigator.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: Lucia Bogatay, Unreinforced Masonry Appeals Board; Bruce Bonacker, Small Business Network; Greg Kamin, San Francisco Young Democrats; Greg Wagner, San Francisco Planning and Urban Research Association; Pierre Franz, Green Party; Haley Matoya Kenzie, League of Young Voters; Erica McDonald, Green Party; Ty Sniffen, California Common Cause; Paula Fiscal, San Francisco Bay Area Region of the Mexican-American Political Association; Steven Hill, New America Foundation; Nell Greenberg, Global Exchange; Heather Box; Richard Knee; Charles Kalish; Irene Dick-Endrizzi; Marc Solomon; Rob Arnow; Bob Planthold; Charlie Marsteller; David Pilpel; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting and available to public at the meeting:

Memo from Executive Director re: Request from prospective member of Unreinforced Masonry Building

Appeals Board for waiver from S.F. C&GCC Section 3.224, November 9, 2005

Memo from Executive Director re: Proposed CRFO Amendments re: Bond Measures, Coordination, Etc., November 9, 2005

S.F. C&GCC Chapter 1: Campaign Finances, June 2005

Memo from Executive Director re: Proposed Amendments to CRFO related to Public Finance Provisions, November 9, 2005

Memo from Executive Director re: Amendment to Clarify Exception to Compensated Advocacy Ban, November 9, 2005

Draft Informal Advice Letter from Executive Director to Randall Knox re: Request for Waiver from S.F. C&GCC Section 3.224, Compensated Advocacy Ban, November 15, 2005

Memo from Executive Director re: Amendment to Require All Candidates for City Elective Office to File Statements of Economic Interests with Department of Elections, November 9, 2005

Executive Director's Report for the Meeting of November 14, 2005

Draft Annual Report for July 1, 2004 – June 30, 2005, San Francisco Ethics Commission

Legislative Digest re: CRFO Amendments, October 25, 2005

5-Month Goals Target, Ethics Commission 2005

Draft Resolution re: Staffing Levels for Ethics Commission

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Rafael Mandelman, president of the Noe Valley Democratic Club and member of the board of the Alice B. Toklas Club, stated that both clubs had given presentations on the proposal to extend public financing to mayoral campaigns, and both clubs were supportive of this proposal.

III. Request for waiver from Campaign and Governmental Code section 3.224 (compensated advocacy ban). Lucia Bogatay, a sole-practitioner licensed architect who serves on the Unreinforced Masonry Building Appeals Board ("UMBAB"), has requested a waiver that would allow her to represent private parties before other City officers and employees as part of her duties as an architect while serving on the UMBAB.

Executive Director John St. Croix explained that this waiver request was nearly identical to the waiver request granted at the last Commission meeting. He stated that the UMBAB is appointed by the Building Inspection Department and reviews the structure of older masonry buildings for seismic retrofitting. He stated that staff believed that it was appropriate to grant Ms. Bogatay, a sole practitioner architect who has represented the architect seat on UMBAB for seven years, a waiver from the compensated advocacy ban.

Ms. Bogatay stated that she had been a resident of San Francisco for 37 years, had been in private practice as an architect for 27 years and had been a sole practitioner for 25 years. She stated that her clients included universities, governments, owner of private residences and historic buildings. She stated that public service was very important to her, as she served on several non-profit boards as well as the UMBAB. She stated that she was requesting this waiver because applying for permits was an

integral part of her work as an architect and if she did not obtain a waiver, she would resign her seat from the UMBAB. She stated she has experience in regularly working on projects involving historic buildings and consequently was well-suited for the UMBAB architect seat. She stated that she had served as Vice-President of UMBAB for 10 years and only recently became aware of the compensated advocacy ban. She stated that the UMBAB has only met once in the past year and that the group's work is almost finished. She stated that similar to Patrick Buscovich, she represented a particular expertise, and the Commission granted Mr. Buscovich's waiver request. She stated that she has carried out her duties on UMBAB for 10 years and has never had any problems.

Commissioner Hansen stated that Ms. Bogatay would benefit from the Commission's prior discussion regarding Mr. Busovich's and Arnie Lerner's waiver requests. She stated that while she had concerns about the Commission's waiver process, it was only fair to grant Ms. Bogatay her waiver request, in light of the Commission's prior granting of waivers to Mr. Buscovich and Mr. Lerner. She thanked Ms. Bogatay for her service on the UMBAB.

Commissioner Lynn stated that the waiver process was becoming regularized and that the Commission may want to look at regulations on it, so that such waiver requests could be dealt with through regulations rather than at Commission meetings.

Public Comment:

Bruce Bonacker, Small Business Network, stated that he was at the meeting where the Commission reviewed the waiver requests for Mr. Buscovich and Mr. Lerner. He stated that small practitioners are put through a more rigorous set of requirements than members of larger corporate offices. He stated that he supported staff's recommendation to grant the waiver.

Motion 05-11-14-1 (Hansen/Lynn): Moved, seconded and passed (3-0, Commissioners Anglade and McCoy absent): that the Commission grant the waiver request.

Chairperson Gusukuma stated that agenda Item VIII would be moved up to Item VI and that Item XI would be removed from the agenda and discussed during the next meeting.

IV. Possible adoption of amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to address issues regarding: (1) committees formed to support or oppose measures placed on the ballot by the San Francisco Unified School District or the Community College District; (2) standards for presuming coordination between a candidate and a person making an expenditure; (3) moving the False Endorsements Ordinance into the CFRO; (4) training for candidates and treasurers; (5) timelines for filing mass mailing statements in the last 16 days of an election; and (6) increasing the late fine for paper filings from \$10 to \$25 per day. (Discussion and possible action.)

Deputy Director Mabel Ng stated that this agenda item dealt with CFRO amendments which the Commission discussed at its last meeting and directed the Commission to staff's November 9, 2005 memo on proposed amendments to bond measures, coordination, etc.

A. Section 1.161 – Time for Filing Itemized Statements

Ms. Ng stated that this section dealt with whether or not the time for filing itemized disclosure statements should be shortened during the 16 days before an election from 5 working days to 24 hours. Candidates must file itemized disclosure statements with regards to mass mailings, disclosing the costs of the mass mailing. She stated that staff did not recommend that the Commission adopt the proposed amendment for two reasons. First, when this legislation was adopted, there was a 2-day period for filing itemized disclosure statements and the Board of Supervisors changed this to 5 days. Second, during the last few days of an election, things are hectic and candidates may not be able to gather the information that they need in order to file these disclosures within 24 hours and would likely have to file amendments to the statements, so that the initial information provided within 24 hours would not necessarily be accurate and consequently may not be of use to the public.

Commissioner Hansen stated that she supported the 24-hour timeline and that it was critically important to provide such information to the public and to other candidates in a timely fashion, so that they can make timely decisions. She stated that in her experience, it was not difficult to get accurate information about the nature of and cost of the mailing. She stated that printers often give clients an invoice or bill when the client picks up their order, and it is very clear how much is owed, and printers often request payment at the end of a campaign because they know that the candidate is running low on money.

Commissioner Lynn stated that he talked with some campaign consultants about this issue and they told him that the most important information that they get from this legal requirement is whether or not the opposition has made a last minute mailing. If so, the candidate needs to send a response and the candidate judges his or response by how many mass mailings were sent out by the opposition. He stated that 24-hour notice is the State standard for late contributions and late independent expenditure reports, and he had not heard any complaints that the State standard was too short.

He stated that there are three types of campaigns: 1) funded campaigns; 2) super-funded campaigns; and 3) grassroots campaigns. He stated that grassroots campaigns obtain cost information for mass mailings well in advance; Commissioner Hansen stated that she did not have any problem obtaining cost information; and super-funded campaigns do not have a problem obtaining cost information. He stated that the disclosure information was important with regards to determining campaign strategy and public information. He stated that these factors outweighed any burdens placed on campaigns. He stated that five days was too long and cited examples where a mailer could be sent out on the Thursday prior to an election and the disclosure would not be due until after the election. He stated that he supported shortening the deadline to 24 hours.

Commissioner Anglade stated that five days was too long and 24 hours was too short. She stated that she felt that 48 hours was reasonable. Chairperson Gusukuma asked why the Board changed the deadline from two days to five days. Deputy Director Ng responded that there was originally an inconsistency regarding when candidates had to file a copy of the mass mailing and a copy of the itemized disclosure statement.

Public Comment:

David Pilpel stated that 48 hours was a reasonable compromise.

Bob Planthold stated that he concurred with Commissioner Hansen's 24-hour period. He stated that printers want money up front and that 48 hours was too late. He stated that staff should review the results of this in several years to determine if 48 hours was adequate.

Commissioner Hansen stated that she still felt strongly about a 24-hour period.

Commissioner Anglade inquired if Commission staff would expect that these filings be filed on a Saturday or Sunday and whether staff would be present to receive these filings. Commissioner Lynn stated that if the mailing was not sponsored by a candidate committee but instead by an independent expenditure group, they have to file a report within 24 hours regarding the cost of the mailing, and Commission staff does come in on weekends during the last 16 days of the election to collect these reports and post them to the internet. He stated that the campaign cycles for the newspapers is completely different in this period than the months before, so the freshness of the information is very important. He stated that the 24-hour notice provision was the industry standard.

Motion 05-11-14-2 (Lynn/Anglade): Moved, seconded and passed (4-1, Commissioner Hansen dissenting) to change the time for candidates to file mass mailing disclosures for mass mailings made within the last 16 days of an election from five days to 48 hours, as follows below in Section 1.161(b)(3).

(3) A candidate for City elective office shall file the original pieces of mail and the itemized disclosure statement required by subsections (b)(1) and (b)(2) within 48 hours of the date of the mailing if the date of the mailing occurs within the 16 days before an election.

B. Section 1.170 – Late Filing Fee Amounts

Deputy Director Ng stated that at its last meeting, the Commission adopted legislation to impose a late filing fee of \$10 for late paper reports due under CFRO, and that there was a suggestion to increase that fee from \$10 to \$25. She stated that staff believed that a change to \$25 would generate administrative complexity and not necessarily result in greater compliance with the law. She stated that the Commission serves as filing officer for many campaign reports that are set out in the PRA and incorporated into local law under CFRO.

She stated that under the PRA, the fee for late paper reports is \$10 per day after the deadline until the report is filed, up to the amount of activity stated in the report or \$100, whichever is greater. Staff proposed that the fee for late reports required by CFRO be \$10 per day to be consistent with the state late fee, which would make it easy to administer. If the Commission adopted a \$25 late fee for reports required by CFRO, staff would need to determine the status of the filer in order to impose the appropriate fee.

In addition, staff is not persuaded that a \$25 fine would necessarily result in greater compliance. When the Commission increased the late filing fines for lobbyist reports, the results did not necessarily indicate that this resulted in greater timely compliance.

Executive Director St. Croix stated that if the Commission changed the late fine from \$10/day to \$25/day, the change would not apply to candidates for county central committee or State committees

that file locally either late supplemental reports or independent expenditure reports. It would apply to local filers for City elective office, general purpose committees and local ballot measure committees. He stated that his concern was that some of the most well-off and large organizations are State committees, and that this increase might have a stronger impact on the smaller, grassroots organizations.

Commissioner Lynn stated that he had asked that the Fines Officer be present for this agenda item, because he had questions about the administrative complexity. He stated that Commission maintains a campaign log that indicated if a committee was a State committee, a county central committee candidate or a local committee. The log also includes the date the report is due and the date the report is filed. He stated that Mr. Luby creates a spreadsheet of all the late filers and asks the log which of these are State and which of these are local committees. He would sort and multiple the days late of the State committees by \$10 and the days late by the local committees by \$25. If that changes a \$10,000 revenues collection to \$25,000 and takes a half hour, \$15,000 for a half hour's worth of work is not bad. He stated that he did not see the administrative problem.

Commissioner Lynn stated that Los Angeles has a \$25/day late fine and it has a 95% compliance rate among their filers, compared to the Commission's 65% rate. He stated that he agreed that the most effective thing the Commission could do is to go after the nonfilers. He stated that the lobbyist data showed that in the two years prior to the lobbyist fine increase, there was a total of 232 late days. After raising the fine, there were a total of 76 late days in the next two years and 20 late days in the latest year reported. He stated that this was a dramatic increase in compliance, so these fines do have an effect on the willingness of campaigns to file timely. He stated that he was in favor of this proposal.

Chairperson Gusukuma asked staff to address the administrative complexity issue. Mr. St. Croix responded that the actual logging in of the data would not be impossible. However, it was taking a cumbersome, time-consuming process and adding another step to the process. Commissioner Lynn stated that with its additional staff, he did not view this as being cumbersome.

Commissioner Anglade inquired why there was difference between late fines for paper versus electronic filings. Ms. Ng responded that the \$10 paper filing fine tracked State law and the \$25 electronic filing was imposed by local law. She clarified that there were two different ordinances – CFRO and the Electronic Filing Ordinance, which governed these fines.

Ms. Ng stated that in reference to Commissioner's Lynn statement that Los Angeles has a \$25 late fine for paper reports, staff talked to Los Angeles and learned that their late fines track State law, which is \$10. Los Angeles has a \$25 late fine, but that only applies to electronic reports.

Commissioner Anglade inquired if the paper and electronic filings were different documents. Ms. Ng responded that they were different documents, as some paper reports cannot be filed online.

Commissioner Hansen stated that she supported a \$25 fine for both paper and electronic filings.

Commissioner McCoy stated that he was against raising the fine for paper filings to \$25 and that he did not see the justification for raising the fine for local filers and local ballot measure committees.

Commissioner Lynn explained that CRFO amendments require a 4/5 votes from the Commission. He stated that there was a State law which prohibited local agencies from adding on additional filing requirements for reports filed with them. He requested that staff consult the Fair Political Practices Commission and inquire if this would be an additional filing requirement. He stated that increasing the penalty is not imposing an additional filing requirement.

Public Comment:

Mr. Pilpel suggested that Commissioner Lynn ask the City Attorney if there had been discussion with the FPCC on whether this constitutes an additional imposition on candidates or committees.

Charles Kalish stated that he appreciated the explanation by Commissioner Lynn. He stated that the data shows that \$25 encourages people to file more than \$10 does, so the Commission should increase its paper filing fee to \$25.

Charles Marsteller asked if the Los Angeles fine increase to \$25 was tied to the consumer price index.

Commissioner Hansen inquired if staff had any information regarding how Los Angeles was able to have a 95% compliance rate. Commissioner Lynn stated that Los Angeles does not grant waivers and they have more enforcement staff.

Motion 05-11-14-3 (Lynn/Hansen): Moved, seconded and failed to pass (2-3, Commissioner Hansen and Commissioner Lynn supporting) to change the late fine from \$10 per day to \$25 per day.

C. Section 1.104 – Definition of Measure

Ms. Ng stated that at the last meeting, the Commission indicated support for a proposal to amend the definition of "measure" in CFRO so that committees formed to support or oppose bond measures placed on the ballot by the Community College District ("District") or San Francisco Unified School District ("SFUSD") are subject to CFRO, meaning that these committees would be subject to audit and enforcement jurisdiction of the Commission.

The revised language would read as follows: "Measure shall mean any City, **San Francisco Unified School District or San Francisco Community College District** referendum, recall or ballot proposition, whether or not it qualifies for the ballot."

Commissioner Anglade inquired about the history of the prior exclusion of these two groups. Ms. Ng responded that these two groups were never excluded, but that they were never included.

Public Comment:

Mr. Pilpel stated that this specifically would include those measures placed on the ballot by those districts pursuant to Prop. 39. He inquired how this interacted with the ban on contractor contributions.

Commissioner Lynn stated that with respect to Mr. Pilpel's comment, he had been contacted by Community College trustee Milton Marks regarding this issue. Commissioner Lynn suggested that the Commission take up this issue in December.

Commissioner Hansen stated that it was important issue and that the Commission needed to take it up at a future meeting, but she did see how it connected to this particular proposal.

Motion 05-11-14-4 (Hansen/Lynn): Moved, seconded and unanimously passed (5-0) to amend Section 1.104 by adding the San Francisco Unified School District and the San Francisco Community College District to the definition of "measure", as follows below.

SEC. 1.104. DEFINITIONS.

(k) "Measure" shall mean any City, San Francisco Unified School District or San Francisco Community College District referendum, recall or ballot proposition, whether or not it qualifies for the ballot.

D. Section 1.107 – Training Requirements for Candidates and Treasurers (new section)

Ms. Ng stated that proposed section 1.107 is a new section that sets out training requirements for candidates and treasurers. She stated that the new section imposes a training requirement for candidates for City elective office and all treasurers of recipient committees that are required to file semi-annual statements with the Ethics Commission.

Commissioner Lynn stated that he was in favor of this provision. He suggested that the language be changed to indicate that the Commission would be offering a series of programs, as opposed to only one training session. He stated that the language did not provide for a penalty for non-compliance and suggested that the penalty for non-participants be ineligibility for a waiver.

Commissioner Hansen questioned how this provision would be enforced. She stated that she supported the training requirement. Ms. Ng responded that if this amendment was adopted by the Commission, non-compliance would be a CFRO violation, subjecting the offender to up to \$5,000 in administrative penalties, in addition to possible civil and criminal penalties. Deputy City Attorney Claire Sylvia noted that the Commission may not want to prohibit waivers outright for offenders, because there may be compelling reasons why a person was unable to attend the training.

Commissioner Anglade stated that she was resistant to this proposed requirement. She asked if this training would be helpful to staff. She suggested that the requirement should be worded so that either a candidate or his or her treasurer would be required to attend training, as opposed to both individuals. Mr. St. Croix responded that having better trained candidates may decrease the chances of violations and would also eliminate a candidate claiming that they were unaware of the law. He stated that Los Angeles has a mandatory training requirement, but that it was relatively new.

Public Comment:

Irene Dick-Endrizzi stated that she had served as a treasurer for two campaigns and that she supported

the training requirement.

Bob Planthold stated that he supported this training requirement. He suggested that the proposed language clarify that it is the candidate who is required to attend the training, as opposed to the candidate's counsel, attorney or other surrogate.

Marc Solomon stated that he had spoken to various people and one of the Commission's greatest weak spots is that people are not educated about the requirements of treasurers and committees. He stated that the Commission should reach out as broadly as possible. He stated that Mr. Pilpel asked him to request that assistant treasurers be included in the training requirement.

Motion 05-11-14-5 (Lynn/Hansen): Moved, seconded and unanimously passed (5-0) to adopt the proposed language, as follows below.

SEC. 1.107. TRAINING FOR CANDIDATES AND TREASURERS

_____ (a) Training Requirements.

(1) Candidates. Every candidate for City elective office and their treasurers shall attend a training program conducted or sponsored by the Ethics Commission prior to each election at which the candidate's name will appear on the ballot.

(2) Treasurers. Every committee treasurer shall attend the next training program conducted or sponsored by the Ethics Commission after the date the committee files either its original statement of organization or an amendment to a statement of organization designating a new treasurer.

(b) Exception. An individual who serves as the treasurer for more than one committee is not required to attend a training required by subsection (a) if that individual has attended such a training within the previous 12 months.

(c) Definition. For the purposes of this section, "committee" shall mean any committee other than a candidate's campaign committee that: (1) qualifies as a committee pursuant to subdivision (a) of Section 82013 of the California Government Code as incorporated into this Chapter by Section 1.104; and (2) is required to file its semi-annual campaign statements with the Ethics Commission.

E. Section 1.100 and new Section 1.163.5 – Incorporating False Endorsements Ordinance

Ms. Ng stated that at its last meeting, the Commission recommended moving the False Endorsements Ordinance into CFRO, and the Commission also suggested that the Ordinance be expanded to include electronic media.

Commissioner Lynn asked if section 1.163.5 should include internet advertisements. Ms. Sylvia responded that the definition of campaign advertisement under b(1) includes internet advertisements. Commissioner Lynn stated that he preferred to remove the words "support of or opposition to" a candidate or measure, so that the regulation encompassed electioneering communication. Ms. Sylvia explained that the proposal simply took an existing provision and moved it into CRFO, without changing the substance of the existing proposal.

Commissioner Hansen asked with respect to section 1.163.5(c), why the criminal penalties of CRFO cannot apply to this section. She proposed that the Commission change the CFRO to include criminal

penalties that would apply to this section. Ms. Sylvia recommended that the Commission have staff and her office go back and look at this issue. Commissioner Hansen requested that the City Attorney look at this issue as well as Commissioner Lynn's questions about electioneering communications, and she suggested that the Commission revisit this issue at its next meeting.

Chairperson Gusukuma stated that the Commission would revisit this issue at its regular December meeting.

F. Section 1.115 – Coordination (new section)

Ms. Ng stated that this section adopted the State rules concerning coordination, so that an expenditure made at the behest of a candidate or made subject to certain provisions may be deemed a contribution to the candidate. She stated that staff's proposal tracked the State rule, with a couple of exceptions. First, staff adopted some language from Los Angeles, including using the term "spender" rather than "person making the expenditure."

Commissioner Lynn suggested that the language in section b(3) be changed to "campaign consultant shared by another campaign" instead of "person who provides, or has provided, the candidate with professional services related to campaign or fundraising strategy for that same election." Ms. Sylvia noted that this change may actually narrow the scope of the regulation.

Mr. St. Croix proposed that the language in section b(3) be changed to the following:

"(3) the spender retains the services of a campaign consultant or other person who provides, or has provided, the candidate with professional services related to campaign or fundraising strategy for that same election;"

Commissioner Hansen inquired about the exceptions in section c(4). She asked how would the Commission ever know if a discussion occurred or if there was a general, nonspecific request. Ms. Sylvia responded that these exceptions were based on the State rule. She stated that these were exemptions from the presumption that something qualified as coordination. Mr. St. Croix noted that these were rebuttable presumptions.

Chairperson Gusukuma inquired about the definition of "agent" in subsection d. Ms. Sylvia responded that an example would be a treasurer. She clarified that it only applied when the person was acting in a capacity within the course and scope of the agency. Ms. Gusukuma inquired if that included counsel and Ms. Sylvia responded in the affirmative.

Public Comment:

Mr. Pilpel stated that this proposal was important but it needed regulations and examples.

Motion 05-11-14-6 (Lynn/McCoy): Moved, seconded and unanimously passed (5-0) to adopt staff's recommendation, as amended, as follows below.

SEC. 1.115. COORDINATION OF EXPENDITURES

(a) General. An expenditure is not considered independent and shall be treated as a contribution from the person making the expenditure to the candidate on whose behalf, or for whose benefit the expenditure is made, if the expenditure funds a communication that expressly advocates the nomination, election or defeat of a clearly identified candidate and is made under the following circumstance:

(1) the expenditure is made at the request, suggestion, or direction of, or in cooperation, consultation, concert or coordination with, the candidate on whose behalf, or for whose benefit, the expenditure is made; or

(2) the communication funded by the expenditure is created, produced or disseminated:

(A) after the candidate has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication; or

(B) after discussion between the creator, producer or distributor of a communication, or the person paying for that communication, and the candidate or committee regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is agreement on any of these topics.

(b) Rebuttable presumption of coordination. In addition to subsection (a) of this section, there shall be a presumption that an expenditure funding a communication that expressly advocates the nomination, election or defeat of a clearly identified candidate is not independent of the candidate on whose behalf or for whose benefit the expenditure is made, when:

(1) it is based on information about the candidate or committee's campaign needs or plans provided to the spender by the candidate;

(2) it is made by or through any agent of the candidate in the course of the agent's involvement in the current campaign;

(3) the spender retains the services of a campaign consultant or other person who provides, or has provided, the candidate with professional services related to campaign or fundraising strategy for that same election;

(4) the communication replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication designed, produced, paid for or distributed by the candidate; or

(5) in the same election that the expenditure is made, the spender or spender's agent is serving or served in an executive or policymaking role for the candidate's campaign or participated in strategy or policy making discussions with the candidate's campaign relating to the candidate's pursuit of election to office and the candidate is pursuing the same office as a candidate whose nomination or election the expenditure is intended to influence.

(c) Exceptions. Notwithstanding the foregoing, an expenditure shall not be considered a contribution to a candidate merely because:

(1) the spender interviews a candidate on issues affecting the spender;

(2) the spender has obtained a photograph, biography, position paper, press release, or similar material from the candidate;

_____ (3) the spender has previously made a contribution to the candidate;

_____ (4) the spender makes an expenditure in response to a general, non-specific request for support by a candidate, provided that there is no discussion with the candidate prior to the expenditure relating to details of the expenditures;

_____ (5) the spender has invited the candidate or committee to make an appearance before the spender's members, employees, shareholders, or the families thereof, provided that there is no discussion with the candidate prior to the expenditure relating to details of the expenditure;

_____ (6) the spender informs a candidate that the spender has made an expenditure provided that there is no other exchange of information not otherwise available to the public, relating to the details of the expenditure; or _____

_____ (7) the expenditure is made at the request or suggestion of the candidate for the benefit of another candidate or committee.

_____ (d) Definition. For purposes of this section, the terms "candidate" includes an agent of the candidate when the agent is acting within the course and scope of the agency.

Mr. St. Croix noted that the December 19 meeting would be a wrap-up of the CFRO amendment discussions and that Commissioners, if they want their own proposals to be included in the staff memo, should submit proposals for that meeting by December 7.

V. Possible Amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing issues related to public financing of candidates, including extending the public finance program to other City offices beyond the Board of Supervisors; funding options for the Election Campaign Fund; administrative adjustments to disbursement of funds; issues related to spending caps, use of unexpended funds, sources of matching contributions, and audits. At this meeting, the Commission will discuss and take public comment on various options related to these topics. The Commission will not vote on these particular changes at the November 14 meeting. Any specific proposals will be presented to the Commission at the December 19 regular meeting for possible action.

A. Extending Public Financing to Candidates for Other City Elective Offices

Ms. Ng stated that staff believes that the information regarding local public financing may not be sufficient to recommend that public financing be extended to candidates for other City elective offices. She stated that funding for public financing to candidates for other City elective offices is not without costs and that funding must be made available for public grants as well as for administrative costs.

She stated that Supervisor Mirkarimi has introduced legislation to extend public financing to candidates for the office of Mayor. Staff believes that many of the issues identified in the legislation are the same issues that the Commission must address in determining whether to extend public financing to other City elective offices. Supervisor Mirkarimi has requested that the Commission consider the proposal to extend public financing for Mayoral candidates at the Commission's December 2005 meeting. Staff recommends that the Commission focus first on whether or not public financing should be extended to candidates running for the office of Mayor. The Commission could address whether public financing should extend to other City elective offices at a subsequent time, perhaps in a more favorable budget climate.

Public Comment:

Rob Arnow stated he was the campaign coordinator for the campaign to bring public financing to the Mayor's race in San Francisco. He stated that his group represented a coalition of 45 organizations and 13 elected officials. He stated that they favored public financing for the mayoral race because that was the most important elected office in the City. He stated that public financing allows politicians to focus their campaign efforts on connecting with people, instead of spending their time on fundraising. He stated that public financing levels the playing field, leads to a more efficient government and holds leaders accountable to the public.

Greg Kamin, San Francisco Young Democrats, stated that he supported Supervisor Mirkarimi's proposal. He stated that public financing is a growing movement. He stated that although the City faced budget shortages, it needed to spend money to have a healthy democracy.

Greg Wagner, San Francisco Planning and Urban Research Association, stated that his group supported public financing for the Mayoral election.

Pierre Franz, Green Party, stated that his group supported this legislation. He stated that low voter turnout at recent elections was disappointing in relation to the resources put into the election.

Haley Matoya Kenzie, League of Young Voters, stated that young people were disaffected by the system and that public financing would increase their participation in the electoral process.

Irene Dick-Endrizzi stated that she supported public financing for the Mayoral election. She stated that she was saddened by the levels of violence in the last Mayoral election.

Nell Greenberg, Global Exchange, stated that Global Exchange supported the legislation.

Richard Knee stated that he was active in Sunshine and that he supported this legislation.

Charles Kalish stated that young people and people of color have a lot to offer the City and that he supported the legislation.

Erica McDonald, Green Party, stated that the legislation was well-written and that she supported it.

Ty Sniffen, legislative analyst for California Common Cause, stated that his group supported the legislation.

Paula Fiscal, associate vice president of the San Francisco Bay Area Region of the Mexican-American Political Association, stated that her group supported the legislation and that it would open up the political process.

Marc Solomon stated that lots of money was spent in recent Mayoral elections and that he supported the legislation.

Steven Hill, New America Foundation, stated that he supported the legislation to extend public financing to the Mayoral election.

Heather Box stated that she supported the legislation.

Mr. Pilpel stated that he supported the legislation. He stated that the Commission should not stop doing audits just because of public financing.

Commissioner Hansen stated that she had some concerns about public financing issues, including how to set the amounts and the issue of exceeding the spending limits.

Commissioner Lynn requested a list of people who have endorsed the legislation by the next meeting. He stated the Shaista Shaikh deserved a great deal of credit for the successful implementation of the public financing program. He stated that administration of this program was very important and that staff should review the program and be fully funded.

Mr. St. Croix stated that this legislation would be considered by the Commission at its December 19 meeting. He stated that the December 12 meeting was special meeting and would be primarily a closed session.

Ms. Ng stated that among the Commission's consideration of amendments to CFRO, one issue was whether the Commission should clarify the law that unspent annual appropriations are kept in the Election Campaign Fund for use in subsequent years. She stated that staff did not have a recommendation as to whether changes should be made to the funding process. She stated that the Mirkarimi legislation contains provisions related to the public financing of candidates for Mayor. She stated that as the Commission considers this legislation, it may determine whether or not the funding process for candidates for the Board should be changed.

Commissioner Lynn stated that this legislation, if enacted, could have parallel tracks and that the Commission could address it after a cycle of the Mayoral public financing. If not passed, he stated that the Commission would address this issue when it addressed the budget.

Commissioner Hansen stated that she supported this legislation.

Mr. St. Croix stated that he was concerned that if the Commission put a requirement that leftover balances stay in a separate fund, there would be an impetus for the Mayor and the Board of Supervisors to underfund the program so as not to tie up funds for the future. He stated that it may be more prudent first to evaluate how the Mayoral public financing program works and then come back and revisit this issue.

The Commission went into recess at 8:06 p.m. At 8:15 p.m. , the Commission reconvened.

C. Adjusting provisions related to the qualification threshold, maximum amount of grants, the disbursement formula, timeline for disbursing public grants, and the pro-rata formula

Ms. Ng stated that this section relates to five issues raised by interested persons concerning the public financing program. She stated that the issues were as follows: 1) whether the \$5,000 qualification threshold should be changed; 2) whether the maximum amount of grants should be changed; 3) whether the formula for the disbursement of public grants should be changed; 4) whether the timing for the disbursement of public grants should be changed; and 5) whether the pro-rata formula should be changed. She stated that staff looked at all of these issues and was not recommending any changes.

Commissioner Lynn stated that if the Commission was going to approve public financing for the Mayoral election, he wanted to keep it clean.

Commissioner Hansen stated that she supported staff's recommendations of

no change for items 1 through 4.

Commissioner Anglade stated that she supported changing the qualification threshold. Ms. Ng stated that the Mirkarimi legislation requires a candidate to raise \$25,000 from 250 supporters.

Chairperson Gusukuma and Commissioner McCoy stated that they agreed with Commissioner Hansen.

D. Breaking the Spending Caps

Ms. Ng stated that questions have been raised regarding public financing and the breaking of the spending cap. She stated that there were two issues: 1) whether or not additional funds should be provided to publicly financed candidates when the spending cap is lifted; and 2) whether publicly-funded candidates who break the spending cap should be required to return the public funds that they received. She stated that candidates who participate in the public financing program may not make expenditures above the spending limit. When a non-participating candidate in a race receives contributions or makes expenditures above the spending limit, the spending limit is lifted for all candidates in the same race, including publicly financed candidates. The amount of public funds available in these instances remains the same – it cannot exceed \$43,750. A concern has been raised that perhaps additional funds should be made available to participating candidates to keep them competitive. Staff does not have a recommendation regarding this issue. Because Supervisor Mirkarimi's legislation has provisions regarding this issue, the Commission will be exploring this matter when it considers his proposal.

Commissioner Lynn stated that he would like to keep things calm on this front if the Commission was going to be making waves on another front.

Commissioner Anglade stated that she concurred with Commissioner Lynn.

Chairperson Gusukuma stated that she favored leaving things as they were.

Commissioner Hansen stated that she favored requiring publicly-financed candidates who break the spending cap to return the money that they receive.

E. Unexpended Funds

Ms. Ng stated that unexpended funds are all funds remaining in the candidate's account on the 30th day after the candidate is elected or not elected to office,

regardless of the source of the funds, but shall not exceed the amount of public funds provided to the candidate. Any candidate who receives public funds and who has unexpended funds must return to the City unexpended funds no later than 30 days after the Commission completes its audit of the candidate. Unexpended funds may be used to pay for qualified campaign expenditures until the Commission completes its audit of the candidate.

Ms. Ng stated that because qualified campaign expenditures are used "to influence the actions of the voters," and unexpended funds are funds that remain after the date of the election when there is no longer a need "to influence the actions of the voters," there has been confusion as to the types of expenditures that can be made with unexpended funds. She stated that staff believes that the intent of the law was to allow certain types of expenses, such as expenses related to keeping the committee or bank account open for audit, but not all types of qualified campaign expenses, to be paid for from unexpended funds. She stated that staff believes that the Commission should amend this section of the law to delineate the types of expenditures that can be made with unexpended funds.

Commissioner Lynn stated that he agreed with staff's recommendation.

Commissioner Hansen stated that she agreed and wanted staff to delineate the permissible uses of unexpended funds and that she disagreed with the specific list in staff's memo.

Chairperson Gusukuma stated that she would appreciate such a delineation.

F. Restricting Sources of Matching Contributions

Ms. Ng stated that it had been suggested that there should be a limit on who may be the source of matching contributions. For example, contributions made by campaign consultants perhaps should not be counted as matching contributions. Matching contributions are contributions made by an individual, other than the candidate, who is a resident of San Francisco. Under current law, the Commission then provides matching public funds for these contributions. Supervisor Mirkarimi's legislation excludes contributions made by the candidate's immediate family from the definition of matching contribution. The Commission may want to address this topic when it considers the Mirkarimi legislation. Staff did not have a recommendation on this issue.

Commissioner Lynn stated that it was inappropriate for campaign consultant contributions to qualify for matching contributions.

Commissioner Hansen stated that she supported staff developing a recommendation on this issue, with specifics.

Chairperson Gusukuma inquired about the exclusion of immediate family members. Mr. St. Croix responded that this would prevent wealthy candidates from using a family distribution network to qualify for public funds.

F. Audits of Publicly Financed Candidates

Ms. Ng stated that the Ethics Commission must audit all candidates who receive public financing. A question has been raised whether the Commission should clarify that a candidate who is certified as eligible to receive public funds but who chooses not to receive such funds is nonetheless subject to audit. In 2002, Supervisor Bevan Dufty was certified as eligible to receive public funds but chose not to accept these funds. Commission staff nonetheless conducted an audit of his committee's records. Staff does not believe that a clarification in the law is necessary; however, the Commission may clarify this practice via regulation. In addition, the Commission may wish to clarify that a candidate who receives public funds and then returns all of it is still subject to an audit.

Commissioner Hansen stated that this needed clarification in the law. She inquired about the time frame for audits. Chairperson Gusukuma stated that Supervisor Mirkarimi's legislation contains a timeline.

The Commission engaged in a brief discussion about staff's auditing practices.

Public Comment:

Mr. Pilpel expressed support and offered suggestions for above-referenced issues.

Mr. Marsteller stated that public financing is a platform for debate and commented on the above-referenced issues.

VI. Consideration of Formal Advice Letter. Randall Knox, a member of the Board of Appeals, is an attorney and would like to represent a client in criminal proceedings. He has requested the Ethics Commission's advice regarding whether his representation of a criminal defendant would present any conflicts of interest under local law.

Mr. St. Croix stated that this issue was considered at last month's meeting and that the Commission had requested that staff re-write the memo.

Commissioner Lynn stated that he supported the advice letter. He stated that the concept that an attorney is bound by the Rules of Professional Conduct is not impressive to the public.

Chairperson Gusukuma made a technical suggestion regarding the language of the letter. Mr. St. Croix suggested the following language: "The Ethics Commission believes the extension of the exception to the District Attorney's Office is appropriate and has adopted amendments to establish such."

The Commissioners engaged in a brief discussion regarding whether a motion needed to be made. Mr. St. Croix stated that the Commission did not need to vote formally on an advice letter where the entire Commission was supportive of the letter.

Public Comment:

Mr. Pilpel stated that the Commission should look at broader ethics issues and that a member of the Board of Appeals should not sit on that panel while representing an employee of a department whose appeals are taken to that body, in a criminal matter.

Mr. Marsteller stated that this had been a useful exercise.

VII. Proposition C and budgetary issues. Discussion the outcome of Proposition C, which the voters rejected on Tuesday, November 8 and the merits of requesting an audit of the Commission to determine needs for appropriate staff levels.

Mr. St. Croix stated that as of 5:00 p.m. today, votes were still being tabulated and Prop. C had received 65,643 votes or 40.41% yes votes and 96,807 votes of 59.59% no votes. He stated that Commissioner Lynn had crafted a resolution regarding getting an audit of the staff, to see if the Charter mandates and staffing levels are sufficient. He stated that he had spoken with the Board and received a less than enthusiastic response from the Budget Analyst regarding the possibility of conducting such an audit. He stated that he was concerned that the Controller's Office would end up recommending greater staff efficiencies rather than additional funding.

Commissioner Lynn stated that this was an important month in the budget cycle because the Mayor decides how money is allocated among departments. He stated that Prop. C was the Commission's effort to tag onto the political effect of the Grand Jury report. He stated that he was concerned that now that Prop. C has gone down, people would forget that the Grand Jury found that the Commission was understaffed. He stated that the Commission needed more staff and that it was difficult to get more staff through the add-on process.

Chairperson Gusukuma stated that she concurred with Mr. St. Croix's concerns.

Public Comment:

Mr. Pilpel stated that he believed that the Commission was asking the Controller for a limited staffing review rather than a full-blown audit.

Mr. Marsteller stated that the Controller's statement on Prop. C interpreted the staffing level as a per-capita ratio for the population of the City, as opposed to a staffing ratio based on the number of filings. He stated that data showed that San Francisco has seven times the amount of filings than New York .

Commissioner Lynn moved that the Board of Supervisors make the Legislative Analyst's office available to do a survey of other ethics commissions and their mandates as compared to San Francisco 's. He stated that the Commission staff was underfunded by an order of magnitude. He suggested that his resolution be amended as follows:

"Resolved: Whereas a legislative study could establish whether the Commission is staffed to meet its Charter mandates according to the best practices available; Whereas such a legislative study would aid the Mayor and the Board of Supervisors in determining appropriate staffing levels for the Commission; and Whereas the Commission does not have the resources to perform such a legislative study. Therefore, be it resolved that the Commission request the assistance of the Board of Supervisors in obtaining the assistance of the Legislative Analyst in performing such a study on the Ethics Commission."

Motion 05-11-14-8 (Lynn/Hansen):Moved, seconded and unanimously passed (5-0) to adopt the resolution, as amended.

VIII. Amendment to the Compensated Advocacy Ban. There are exemptions in the Compensated Advocacy Ban for licensed attorneys to contact city lawyers in the course of representing their clients. This amendment to the Campaign and Governmental Conduct Code section 3.224 would clarify that the exemption applies to the City Attorney's Office, the District Attorney's Office, the Public Defender's Office, attorneys in the Tax Collector's Office and the Sherriff's Office and others

Mr. St. Croix stated that under current law, attorneys representing their clients are allowed to communicate with the City Attorney's Office and outside counsel

hired by the City in pending litigation. This measure would add the District Attorney's Office, the Public Defender's Office, attorneys in the Tax Collector's Office and the Sheriff's Office and witnesses in a pending litigation matter.

Public Comment:

Mr. Pilpel stated that the amendment could use some clarification concerning what constitutes the practice of law.

Mr. Marsteller stated that he supported a broad interpretation of the law.

Ms. Sylvia stated that the exemption for engaging in the practice of law reads broadly. She stated that under *Baron*, the practice of law is something which requires a licensed attorney.

Motion 05-11-14-7 (Lynn/Gusukuma): Moved, seconded and passed (4-1, Commissioner Anglade dissenting) to adopt staff's recommendation to amend Section 3.224(b), as follows below:

Section 3.224 Prohibition on Representing Private Parties Before Other City Officers and Employees – Compensated Advocacy

(b) Exceptions. This section shall not apply to any communication by: (1) an officer of the City and County on behalf of the City and County; (2) an officer of the City and County on behalf on a business, union, or organization of which the officer is a member or full-time employee; (3) an associate, partner or employee of an officer of the City and County, unless it is clear from the totality of the circumstances that the associate, partner or employee is merely acting as an agent of the City and County officer; or (4) a City officer in his or her capacity as a licensed attorney engaged in the practice of law, which includes representing clients in communications with the City Attorney's Office, District Attorney's Office, Public Defender's Office, attorneys in the Tax Collector's Office or Sheriff's Office, outside legal counsel hired by the City, representatives of the City who are named in a pending litigation matter or witnesses or potential witnesses in a pending litigation matter.

IX. Amendment to the Conflict of Interest Code. Candidates for most citywide offices must file a Statement of Economic Interests with the Department of Elections. These offices include candidates for Mayor, Board of Supervisors, District Attorney, City Attorney and Treasurer. This amendment to the Campaign and Governmental Conduct Code section 3.1-100 et seq. would extend that requirement to candidates for Sheriff, Assessor,

Public Defender, the Board of Education and the Community College Board.

Mr. St. Croix stated that this proposal would extend SEI filing requirements to candidates for Sheriff, Assessor, Public Defender, the Board of Education and the Community College Board.

Public Comment:

Mr. Pilpel suggested that "to be disclosed" be deleted (1:25).

Motion 05-11-14-9 (McCoy/Lynn): Moved, seconded and unanimously passed (5-0) to adopt staff's recommendation to extend SEI filing requirements to candidates for Sheriff, Assessor, Public Defender, the Board of Education and the Community College Board.

X. Executive Director's Report. An update of important Ethics Commission staff activities since the previous monthly meeting.

Mr. St. Croix highlighted a few items, including the following: 1) he would be interviewing three candidates for the auditor position; 2) under the new electioneering disclosures, there had been one disclosure, a \$45,000 billboard featuring Supervising Sandoval by Clear Channel Outdoor; 3) there was a draft annual report and he requested that Commissioners contact him with comments by the next meeting; 4) there were no outstanding fines with regards to the lobbyist and campaign consultant programs; 5) the lead investigator attended training held by John Reed & Associates earlier in the year; and 6) staff recently attended a National Ethics Agenda conference at the Markkula Center for Applied Ethics at Santa Clara University.

Commissioner Hansen inquired how the cost-savings for the new auditor position would be allocated. Mr. St. Croix responded that the auditor position was budgeted for a October 1 start date and that any cost-savings would be use for temporary staff. Commissioner Hansen stated that she was concerned with the success rate of collection efforts by the Bureau of Delinquent Revenues.

Commissioner Lynn inquired about the status of the August 1 deadline filings and how many notices were sent out. He stated that the Commission should renegotiate with the Mayor regarding the appropriateness of having revenues count for its budget. He stated that privatizing the campaign finance database would be dangerous. He stated that the San Diego Ethics Commission just issued a \$15,000 fine and that the Commission should do "smart" audits.

Public Comment:

Mr. Marsteller inquired about the auto-audit subroutine on the lobbyist database. He inquired if the Commission staff had an in-house IT person. He inquired if there would be a public demonstration for the lobbyist database.

XI. Minutes of the monthly Commission meeting of October 17, 2005 and the special Commission meeting (retreat) of October 15, 2005 .

Chairperson Gusukuma stated that this agenda item would be moved to the December 12, 2005 meeting.

XII. Commissioner questions and proposed future agenda items.

a) Inquiries to the Executive Director. Commissioners may make inquiries to the Executive Director about matters of interest to the Commission and the Commission may request that the Director report back to the Commission on a particular item.

b) Items for future meetings. Commissioners may propose items for future agendas and the Commission may determine the priority of these items.

Commissioner Lynn stated that for future confidential lists of complaints provided to the Commission, he wanted the list to show every single complaint that staff receives. He stated that this was necessary because the jurisdictional issue was not yet decided. He requested that the Executive Director Report have a section regarding the expedited non-filer enforcement program. He stated that he wants pollsters to be required to reveal who funds them. He stated that he already had raised the question about \$100,000 loans and that the Commission had adopted a proposal that converts an excessive candidate loan.

Commissioner Hansen stated that she agreed with Commissioner Lynn's requests. She stated that discussion of the complaint process and complaint log had dropped off the 5-month goals list. She stated that she wanted to get the budget process started.

Commissioner Lynn stated that he agreed with Commissioner Hansen's statement about the budget process.

Public Comment:

Mr. Pilpel suggested that the Commission make available a blank complaint log for the public, so that they could see the type of information included in the log.

Mr. St. Croix stated that the Commission would review its enforcement process in January.

XIII. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

XIV. Adjournment.

Motion 05-11-14-10 (Lynn/Anglade): Moved, seconded and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 9:53 p.m.

Respectfully submitted,

Richard Mo

Legal Analyst/Investigator

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**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF REGULAR MEETING**

December 12, 2005, 5:30 P.M.

DOCUMENTS DEPT.

and AGENDA

Room 408 City Hall

DEC - 2 2005

1 Dr. Carlton B. Goodlett Place, San Francisco

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- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Closed session. (Discussion and possible action.)

A. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 19

B. Closed session held pursuant to Brown Act section 54956.9(b) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff or defendant.

Conference with Legal Counsel: Anticipated litigation as defendant

Number of possible cases: 2

- IV. Discussion and votes regarding closed session action and deliberations. (Discussion and possible action.)

A. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation. (Discussion and possible action.)

Motion: The Charter provides that deliberations regarding complaints are confidential. Pursuant to section C3.699-13, the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.

B. Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation. (Discussion and possible action.)

Motion: The Brown Act provides that deliberations regarding anticipated litigation are confidential. Pursuant to Government Code section 54956.9(b), the Ethics Commission finds that it is in the best interests of the public (not) to disclose its closed session deliberations re: anticipated litigation.

- V. Minutes of the monthly Commission meeting of October 17, 2005 and the special Commission meeting (retreat) of October 15, 2005. (Discussion and possible action.)
- VI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- VII. Adjournment.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decision in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, contact Adele Destro by mail to Interim Administrator, Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102-4689; by phone at 415 554 7724; by fax at 415 554 7854; or by email at sotf@sfgov.org. Citizens interested in obtaining a free copy of the Sunshine Ordinance can request a copy from Ms. Destro or by printing Chapter 67 of the San Francisco Administrative Code on the Internet, <http://www.sfgov.org/sunshine/>. The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing devices.

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SF Ethics Commission

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December 12, 2005

(Approved as amended 01/09/06)

Minutes of the Regular Meeting of the

San Francisco Ethics Commission

City Hall, One Dr. Carlton B. Goodlett Place, Room 408

December 12, 2005

I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 5:35 p.m.

COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Waukeen McCoy, Vice-Chairperson; Joe Lynn, Commissioner; and Eileen Hansen, Commissioner. Excused: Michele Anglade, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Richard Mo, Chief Investigator; Linda Bjorke, Assistant Investigator; and Kristian Ongoco, Campaign Finance Assistant.

OFFICE OF THE CITY ATTORNEY: Claire Sylvia, Deputy City Attorney.

OTHERS PRESENT: None.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting and available to public at the meeting:

Memo from Deputy Executive Director Mabel Ng re: CFRO Amendments, December 2, 2005

Draft Minutes of the Special Meeting/Retreat of October 15, 2005

Draft Minutes of the Regular Meeting of October 17, 2005

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

III. Closed session.

A. Closed session held pursuant to Charter section C3.699-13, Brown Act section 54956.9(c) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff.

Conference with Legal Counsel: Anticipated litigation as plaintiff

Number of possible cases: 19

B. Closed session held pursuant to Brown Act section 54956.9(b) and Sunshine Ordinance section 67.10(d) to discuss anticipated litigation as plaintiff or defendant.

Conference with Legal Counsel: Anticipated litigation as defendant

Number of possible cases: 2

Motion 05-12-12-1 (Lynn/McCoy): Moved, seconded, and unanimously passed (4-0): that the Commission go into closed session.

At 5:37 p.m., the Commission went into a closed session. The following individuals remained in the room: Chairperson Gusukuma; Vice Chairperson McCoy; Commissioner Hansen; Commissioner Lynn; Deputy City Attorney Claire Sylvia; Executive Director John St. Croix; Deputy Executive Director Mabel Ng; Chief Investigator Richard Mo; Assistant Investigator Linda Bjorke; and Campaign Finance Assistant Kristian Ongoco.

At 8:04 p.m., the Commission reconvened in open session.

IV. Discussion and votes regarding closed session action and deliberations.

- Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.
- Discussion and vote pursuant to Brown Act section 54957.1 and Sunshine Ordinance section 67.12 on whether to disclose any action taken or discussions held in closed session regarding anticipated litigation.

Motion 05-12-12-2 (Lynn/McCoy): Moved, seconded, and unanimously passed

(4-0): that the Commission not disclose any discussions held in closed session.

Executive Director St. Croix announced that the Commission took the following action:

- 1) The Commission entered into a settlement agreement with the Daly 2002 Committee, ID No. 1244756, Ethics Complaint No. 21-050907, to resolve a complaint initiated by staff related to three mass mailings for which the Committee failed to file originals or copies of the mailings and disclosure statements on a timely basis. The Committee will pay a settlement amount of \$2,800.
- 2) The Commission entered into a settlement agreement with Coleman Advocates for Children and Youth, Ethics Complaint No. 31-031014, to resolve a complaint that Respondent failed to file a semi-annual independent expenditure committee campaign statement and four supplemental independent expenditure statements related to the November 2003 election. Respondent will a pay a settlement amount of \$15,840.
- 3) The Commission entered into a settlement agreement with the Radulovich for Supervisor Committee, ID No. 1244809, candidate Tom Radulovich and treasurer Susan Stephenson, Ethics Complaint No. NRF-05-050927, to resolve a staff initiated complaint that Respondents failed to file paper and electronic campaign finance disclosure reports for the period July 1, 1004 to December 31, 2004 on a timely basis. Respondents will pay a settlement amount of \$1,350.
- 4) The Commission entered into three settlement agreements as a result of the Commission's streamlined enforcement program for nonresponsive filers. These include:
 1. a settlement agreement with the Joel Springer for Board of Education Committee, ID No. 1267237, Richard San Mames, Treasurer, Ethics Complaint No. NRF-12-050927, to resolve a staff-initiated complaint related to the failure of the Committee to file campaign finance disclosure reports on a timely basis. The Committee will pay a monetary penalty of \$3,220.
 2. a settlement agreement with the Garrett Jenkins for Supervisor Committee, ID. No. 1248342, Ethics Complaint No. NRF-57-041231, to resolve a staff-initiated complaint related to the failure of the Committee to file campaign finance disclosure reports on a timely basis. The Committee will pay a monetary penalty of \$4,000.
 3. a settlement agreement with the Lucrecia Bermudez Committee, ID No. 1268773, Ethics Complaint No. NRF-03-050927, to resolve a staff-initiated complaint related to the failure of the Committee to file campaign finance disclosure reports on a timely basis. The Committee will pay a monetary penalty of \$3,650.

- 5) The Commission found probable cause in two matters. The Commission will therefore conduct a hearing on the merits to determine whether any violations occurred and Respondents are presumed innocent of the allegations unless and until they are proved. The Respondents are: David Parker for Supervisor 7, ID No. PEN 608, candidate Edgar "David" Parker Jr., Ethics Complaint No. NRF 56-041231; and Committee for Proposition W, ID No. 870847, James L. Hunt, Treasurer, Ethics Complaint No. NRF-01-050921.

Public Comment:

None.

V. Minutes of the monthly Commission meeting of October 17, 2005 and the special Commission meeting (retreat) of October 15, 2005 .

October 15, 2005 Minutes

Executive Director St. Croix suggested two minor amendments on pages 5-6, regarding the rank order of Commissioner Lynn and Commissioner Hansen's priorities for the Commission.

Commissioner Hansen suggested a minor amendment on page 7.

Public Comment:

None.

Motion 05-12-12-3 (McCoy/Hansen): Moved, seconded, and unanimously passed

(4-0): that the Commission approve the minutes of the special meeting/retreat of October 15, 2005 , as amended.

October 17, 2005 Minutes

Public Comment:

None.

Motion 05-12-12-4 (McCoy/Gusukuma): Moved, seconded, and unanimously passed

(4-0): that the Commission approve the minutes of the regular of October 17, 2005 .

VI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

VII. Adjournment.

Motion 05-12-12-5 (McCoy/Hansen): Moved, seconded and unanimously passed (4-0): that the Commission adjourn.

The meeting was adjourned at 8:21 p.m.

Respectfully submitted,

Richard Mo

Chief Investigator/Legal Analyst

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Ethics Commission



30 Van Ness Ave., Suite 3900
San Francisco, CA 94102
Phone 581-2300 Fax 581-2317

**SAN FRANCISCO ETHICS COMMISSION
NOTICE OF SPECIAL MEETING
December 19, 2005, 6:00 P.M.
and AGENDA**

Room 408 City Hall

1 Dr. Carlton B. Goodlett Place, San Francisco

Please note that this is not the Commission's Regular Meeting Time

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incl
- I. Call to order and roll call.
- II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.
- III. Legislation to Extend Public Financing to Mayoral Candidates. Supervisor Mirkarimi has introduced legislation to create a public financing program for Mayoral races and to make other changes to the City's existing public financing program. The proposal establishes qualifying thresholds, matching formulas, and spending limitations. It also establishes a funding mechanism, reporting requirements, administrative cost requirements and auditing rules, among other things. The Ethics Commission will discuss the merits of the proposal, consider amendments and possible approval. A staff memo regarding the proposed legislation is available in the Commission office and on the Commission web site. (Discussion and possible action.)
- IV. Possible Amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing issues related to public financing of candidates, and miscellaneous amendments proposed by staff and Members of the Commission. Such amendments include: use of unexpended funds, the scope of the contractor contribution ban, the definition of qualified campaign expenditures, the prohibition on multiple campaign accounts, campaign advertisement disclosure requirements, the false endorsement ordinance, deadlines that fall on weekends and holidays, the electronic filing ordinance, and surplus funds. Amendments proposed by Commissioners include amendments to: convert certain accrued expenses into contributions; require state committees to file local reports; require reporting of dates that expenditures are made or accrued; regulate campaign contribution solicitors; extend the ban on contractor contributions to contractors who contract with agencies on which Mayoral or Supervisorial appointees sit; regulate the practice of conducting polls; regulate paid ballot signature collectors; require the return of public funds from candidates who break spending limits; include in audit requirements candidates who are certified as eligible to receive public funds but do not accept them; require completion of audits within two years of the pertinent election. A staff memo will be available in the Commission office and on the Commission web site. (Discussion and possible action.)
- 12-15-2005 5:55:00



- V. **Annual Report.** The Ethics Commission Annual Report was distributed at the November, 2005 meeting. Commissioners will discuss the contents of the report, suggest and vote on possible amendments, and adopt the report for submission to the Mayor and Board of Supervisors. (Discussion and possible action.)
- VI. **Budget discussion.** A proposed Ethics Commission budget for the Fiscal Year beginning on July 1, 2006 is due at the end of February, 2006. Commissioners will hold a preliminary discussion of budget issues and proposals to provide guidance to the staff in preparing the budget submission for FY 2006/07. (Discussion.)
- VII. **Response to Fair Political Practices Commission.** A recent advice letter released by the FPPC contends that there are enforcement issues related to provisions of San Francisco law, S.F. Campaign and Governmental Conduct Code sections 1.135, 1.134(c), and 1.161.5(b) governing disclosure requirements and state general purpose committees. The Commission will discuss and possibly approve a response to the FPPC advice letter. (Discussion and possible action.)
- VIII. **Minutes of the Commission meeting of November 14, 2005 and the Commission meeting of December 12, 2005.** (Discussion and possible action.)
- IX. **Executive Director's Report.**
- X. **Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**
- XI. **Adjournment.**

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Minutes of the Regular Meeting of the
San Francisco Ethics Commission
City Hall, One Dr. Carlton B. Goodlett Place, Room 408
December 19, 2005

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I. Call to order and roll call.

Chairperson Gusukuma called the meeting to order at 6:14 p.m.

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COMMISSION MEMBERS PRESENT: Emi Gusukuma, Chairperson; Waukeen McCoy, Vice-Chairperson; Michele Anglade, Commissioner; Eileen Hansen, Commissioner; and Joe Lynn, Commissioner.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; and Richard Mo, Chief Investigator.

OFFICE OF THE CITY ATTORNEY: Chad Jacobs, Deputy City Attorney.

OTHERS PRESENT: Supervisor Ross Mirkarimi; Bob Planthold; Jane Morrison; Jeff Whittington; Clark Moscrip; Ted Hexten; Julie Sperber; Howard Wallace, Senior Action Network; Rich Ow; Conny Ford; Richard Hansen; Barbara L. Raymond; Rafael Corras; Simon Timons; Dan Newman; Rick Galbreath, San Francisco Bay Chapter Sierra Club; Rob Arnow, San Franciscans for Voter Owned Elections; Kirsten Lambertsen, California Center for Community Democracy; Arthur Chang; Yazzie Collins; Brian Gardner, San Francisco Young Democrats; K. Roberts, Trees Not Cars; Barry Hermanson; Denise D'Anne; Esther Fuhman; David Pascal; Jonee Levy; Karl Kramer, San Francisco Living Wage Coalition; John Daniel, Milk Club; Nolan Treadway; Amrah Salomon Johnson, Democracy Matters; Starchild, Libertarian Party; Maria Guillen, SEIU 790; Julian Davis, Office of Assemblyman Mark Leno; T.J. Purple; Greg Shaw; Harvey Milk LGBT Democratic Club; Peter Wong, HMLGBTDC; Greg Wagner, SPUR; Julian Moise McQueen, LPOV; Anita Mayo, Pillsbury Winthrop; Charles Marsteller; Kevin Heneghan, Sutton Law Firm; and other unidentified members of the public.

MATERIALS DISTRIBUTED:

Materials distributed in advance of meeting and available to public at the meeting:

Additional Proposed Amendments, December 19, 2005

Memo from Executive Director re: Agenda Item III – Legislation to Extend Public Financing to Candidates for Mayor, December 15, 2005

Memo from Executive Director re: Proposed Legislation to Extend Public Financing to Mayor Candidates, December 15, 2005

Legislative Digest re: Public Financing for Mayor Candidates, October 25, 2005

Memo from Executive Director re: Changes to City's Existing Public Financing Program Under Supervisor Mirkarimi's Proposed Legislation, December 8, 2005
Summary Chart re: Mirkarimi Legislation for Public Financing for Mayoral Candidates, December 2005
Letter from San Francisco Planning and Urban Research Association re: Public Financing for Mayoral Candidates, November 23, 2005
Letter from Harvey Milk LGBT Democratic Club re: Public Financing of Mayor Elections, December 14, 2005
Letter from The League of Young Voters re: Public Financing for Mayoral Candidates, December 5, 2005
Letter from Sierra Club re: Public Financing for Mayoral Election, November 28, 2005
Letter from Alice B. Toklas LGBT Democratic Club re: Public Financing of Mayor Elections, December 1, 2005
Methodology for Establishing Various Thresholds in Voter Owned Elections Legislation
Memo from Executive Director re: Agenda Item IV – Possible Amendments to CFRO, December 15, 2005
Memo from Executive Director re: Possible Amendments to CFRO, December 15, 2005
Memo from Deputy Executive Director re: CFRO Amendments, December 2, 2005
San Francisco Campaign and Governmental Conduct Code, Chapter 1 – Campaign Finance, November 2005
Draft Annual Report, San Francisco Ethics Commission, July 1, 2004 – June 30, 2005
Advice Letter from Fair Political Practices Commission re: State General Purpose Committees and applicability of Campaign Disclosure Requirements of S.F. C&GCC Sections 1.135, 1.134(c) and 1.161.5(b), November 3, 2005
Draft Minutes of the Regular Meeting of November 14, 2005
Draft Minutes of the Regular Meeting of December 12, 2005

II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

Bob Planthold stated that the memo from the last meeting regarding the exception to the compensated advocacy ban was too narrow and contained an attorney-biased focus. He stated that there was not enough scope in consideration and that the amendment should consider other professions. He stated that he was concerned that the letter from the California Fair Political Practices Commission was unsigned and not on letterhead.

Jane Morrison stated that she supported the public financing legislation. She stated that in 1963, Jack Shelley was elected mayor with \$100,000; in 1967, Joe Alioto was elected mayor with \$500,000; and Jack Morrison ran for mayor with \$45,000.

Barry Hermanson stated that he was a former candidate for supervisor in 2002 and participated in the public financing program. He stated that public financing was very helpful because it allowed him to focus his campaign efforts on areas other than fundraising.

- III. Legislation to Extend Public Financing to Mayoral Candidates.** Supervisor Mirkarimi has introduced legislation to create a public financing program for Mayoral races and to make other changes to the City's existing public financing program. The proposal establishes qualifying thresholds, matching formulas, and spending limitations. It also establishes a funding mechanism, reporting requirements, administrative cost requirements and auditing rules, among other things. The Ethics Commission will discuss the merits of the proposal, consider amendments and possible approval.

Deputy Executive Director Mabel Ng explained how the proposed partial financing program for mayoral candidates would work. She stated that staff has prepared a memo that outlines some of the issues that they identified with respect to the legislation, and staff has been engaged in discussion with Supervisor Mirkarimi and the proponents of the legislation. She stated that staff was able to resolve most of those issues.

Supervisor Ross Mirkarimi stated that he enjoyed meeting with Executive Director John St. Croix and Commission staff and that his office agreed with the staff report and the amendments to the staff report, as reflected in the legislation. He stated that he viewed this legislation as a common sense extension of a fine process that San Francisco has already instigated with its tradition of public financing for supervisorial elections. He stated that this was logical step in the proliferation with this particular method in moving citywide. He stated that this country is suffering from a democracy recession, as evidenced by declining voter turnout and voters who feel disenfranchised and disconnected from the political process because of the influence of money.

He stated that he wanted to change this, and that the people in the room have done fine work from an organic and grassroots perspective in trying to galvanize what people feel is a very sensible response, in order to forward an antidote to that particular deficit in our democracy. He stated that dozens of organizations had already signed up their support for this legislation, including the San Francisco Democratic Party, the League of Women Voters, Common Cause, SPUR, the San Francisco Labor Council, SEIU 790, the Sierra Club, League of Conservation Voters, the San Francisco Green Party, and the League of Pissed Off Voters. He stated that he wanted to reinvigorate the public confidence within San Francisco's electoral landscape. He stated that other jurisdictions have instituted public financing, including Connecticut, Arizona and Maine. He stated that this was a positive strategy and empowered and enfranchised a process by leveling the playing field. He stated that this legislation would send a strong message to other jurisdictions that this was the right trend.

Commissioner Lynn complimented the proponents of the legislation and everyone who worked on it. He stated that this was first-class piece of legislation. He thanked Bob Stern and Steve Levin of the Center for Governmental Studies, Deputy City Attorney Chad Jacobs, and Mr. Hill and Mr. Arnow. He stated that the legislation tackled and solved various difficult problems. He complimented staff on their input and work on this legislation.

Commissioner Anglade stated that she agreed with Commissioner Lynn and that the presence of so many people at the meeting allowed her to see that the benefit of public financing was more than theoretical.

Public Comment:

The following individuals stated their support for the legislation and some of the reasons were, but not limited to, leveling the playing field; removing money as a factor in politics; allowing candidates to spend more time on the issues and less time on fundraising; restore public confidence in the electoral process; negate the impact of money from large corporations; save politicians valuable time; follow other jurisdictions which have already implemented similar programs; and revive democracy: Connie Ford, Local 3 Secretary and Vice President of the San Francisco Labor Council; Richard Hansen; Howard Wallace, San Francisco Labor Council, speaking on behalf of Senior Action Network; Richard Ow; Denise D'Anne, San Franciscans Tomorrow; Maria Guillen, Regional Vice President of SEIU Local 790; Karl Kramer, San Francisco Living Wage Coalition; Dan Newman, Executive Director of Takebackca.org; Robert Haaland, Local 790 labor organizer; David Pascal; Julian Davis, Office of Assemblyman Mark Leno; Ana Salina Johnson, San Francisco State University; Brian Gardner, San Franciscan Young Democrats; Crystal Menul; Nicole Derse; Jesse Collins, San Francisco Green Party; Catherine Roberts, San Francisco Green Party; Greg Shaw, HMGLBT Democratic Center; Rick Galbreath, San Francisco Sierra Club; Peter Wong, HMGLBT Democratic Center; Greg Wagner, San Francisco SPUR; Bob Planthold, San Francisco People's Organization; Steve Hill; Marc Solomon; and Julian Moise McQueen.

Rob Arnow complimented staff for its excellent analysis. He stated that public financing leads to more accountable leaders, levels the playing field and increase voter participation. He stated that full public financing was a great proposal but that the City was currently facing a budget crisis.

The following individual stated his opposition to the legislation: Starchild, Libertarian Party. He stated that the legislation would harm small candidates, the public should voluntarily pay for services and should not be forced to pay for these candidates.

The following individuals supported the legislation and stated that it did not go far enough because it did not provide for 100% public financing: Clark Moscrip; Brad Willmore, President, Telegraph Hill Dwellers; Ted Hextor; John Daniel; Jeff Woodington; and T.J. Purple.

Commissioner Hansen thanked everyone for coming to the meeting. She stated that the standing room only crowd was astounding and that she hoped people would come back for future Commission meetings. She thanked staff, Mr. Jacobs and fellow Commissioners for their work on this legislation.

Motion 05-12-19-1 (McCoy/Anglade): Moved, seconded and unanimously passed (5-0): that the Commission approve the legislation, with amendments as proposed by staff.

The Commission went into recess at 7:37 p.m. At 7:56 p.m., the Commission reconvened.

IV. Possible Amendments to the Campaign Finance Reform Ordinance. In accordance with a proposed timetable for consideration of amendments to the CFRO, the Commission will consider possible amendments to the provisions of CFRO governing issues related to public financing of candidates, and miscellaneous amendments proposed by staff and Members of the Commission. Such amendments include: use of unexpended funds, the scope of the contractor contribution ban, the definition of qualified campaign expenditures, the prohibition on multiple campaign accounts, campaign advertisement disclosure requirements, the false endorsement ordinance, deadlines that fall on weekends and holidays, the electronic filing ordinance, and surplus funds. Amendments proposed by Commissioners include amendments to: convert certain accrued expenses into contributions; require state committees to file local reports; require reporting of dates that expenditures are made or accrued; regulate campaign contribution solicitors; extend the ban on contractor contributions to contractors who contract with agencies on which Mayoral or Supervisorial appointees sit; regulate the practice of conducting polls; regulate paid ballot signature collectors; require the return of public funds from candidates who break spending limits; include in audit requirements candidates who are certified as eligible to receive public funds but do not accept them; require completion of audits within two years of the pertinent election.

Deputy Executive Director Mabel Ng stated that staff's December 15, 2005 memo discussed possible CFRO amendments. The memo was divided into three sections: 1) amendments held over from previous meetings; 2) amendment to the public financing program; and 3) new proposals from staff and Commissioners.

A. Amendments Continued From Previous Meetings

1. Section 1.126 – Scope of the Contractor Contribution Ban

Ms. Ng stated that at the September meeting, staff recommended adding language to section 1.126 to define what persons or entities are considered to "contract" with the City for purposes of the ban; setting a dollar threshold before the ban applies; and clarifying that the ban applies to an initial contract as well as any amendments of or modifications to a contract. Members of the Commission suggested additional possible amendments such as requiring notice provisions related to approval of contracts and the prohibition, extending the prohibition to people who subcontract with the City, having the ban apply when parties enter into several smaller contracts with the City in a fiscal year, and extending the prohibition to grants.

After an extensive discussion of Section 1.126, Commissioner Lynn made the following motion, seconded by Commissioner Hansen:

SEC. 1.126. CONTRIBUTION LIMITS - CONTRACTORS DOING BUSINESS WITH THE CITY, THE UNIFIED SCHOOL DISTRICT AND THE SAN FRANCISCO COMMUNITY COLLEGE DISTRICT

(a) Definitions.

For purposes of this section, the following words and phrases shall mean:

(1) "Person who contracts with" includes any party or prospective party to a contract, as well any member of that party's board of directors, its chairperson, chief executive officer, chief financial officer, chief operating officer, any person with an ownership interest of more than 20 percent in the party, any subcontractor listed in a bid or contract, and any committee, as defined by this Chapter that is sponsored or controlled by the party, provided that the provisions of Section 1.114 of this Chapter governing aggregation of affiliated entity contributions shall apply only to the party or prospective party to the contract.

(2) "Contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District, or the San Francisco Community College District for:

- (A) the rendition of personal services,
- (B) the furnishing of any material, supplies or equipment,
- (C) the sale or lease of any land or building, or
- (D) a grant, loan or loan guarantee.

(b) Prohibition.

No person who contracts with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District or the San Francisco Community College District

(1) shall make any contribution to:

- (A) an individual holding a City elective office if the contract must be approved by such individual, the board on which that individual serves or a board on which an appointee of that individual serves;
- (B) a candidate for the office held by such individual; or
- (C) a committee controlled by such individual or candidate

(2) whenever the agreement or contract has a total anticipated or actual value of \$50,000 or more, or a combination or series of such agreements or contracts approved by that same individual or board have a value of \$50,000 or more in a fiscal year of the City and County

(3) at any time from the commencement of negotiations for such contract until:

- (A) the termination of negotiations for such contract; or
- (B) six months have elapsed from the date the contract is approved.

(c) Notification.

(1) Prospective Parties to Contracts. Any prospective party to a contract with the City and County of San Francisco, a state agency on whose board an appointee of a City elective officer serves, the San Francisco Unified School District or the San Francisco Community College District shall inform each person described in subsection (a)(1) of the prohibition in subsection (b) by the commencement of negotiations for such contract.

(2) **Individuals Who Hold City Elective Office.** Every individual who holds a City elective office shall, within five business days of the approval of a contract by the officer, a board on which the officer sits or a board of a state agency on which an appointee of the officer sits, notify the Ethics Commission, on a form adopted by the Commission, of each contract approved by the individual, the board on which the individual serves or the board of a state agency on which an appointee of the officer sits. An individual who holds a City elective office need not file the form required by this subsection if the clerk or secretary of a board on which the individual serves or a board of a state agency on which an appointee of the officer serves has filed the form on behalf of the board.

Public Comment:

Mr. Planthold stated that he supported extending this ban beyond the initial scope and that loopholes needed clarification, such as the definition of "fiscal year" and the \$50,000 value.

Mr. Marsteller stated that the Purchaser's Office keeps a list of contracts that is available to the public. He stated that a political consultant could get a list of contracts under \$50,000.

Anita Mayo, Pillsbury Winthrop, stated that the Commission had exceeded the original intent of the legislation by expanding the list of prohibited contributions. She suggested some amendments to the regulation.

Motion 05-12-19-2 (Lynn/Hansen): Moved, seconded and unanimously passed (5-0): that the Commission adopt staff's recommendation in whole, except as amended as stated above.

2. Sections 1.104(n) and 1.132 – Qualified Campaign Expenditures

Ms. Ng stated that at the September 19 meeting, the Commission discussed amending the definition of the phrase "qualified campaign expenditures" to exclude certain expenditures, such as filing fees, from counting towards a candidate's voluntary expenditure ceiling. Because candidates who receive public financing may use public funds only on qualified campaign expenditures, the Commission also discussed whether to amend CFRO to permit candidates to use public funds on certain expenditures that would not otherwise constitute qualified campaign expenditures.

Ms. Ng stated that staff had proposed language that would exclude both filing fees and costs incurred after the election that do not directly affect the outcome of the election from the definition of qualified campaign expenditures. Staff also proposed permitting candidates to use public funds for such expenditures. The Commission continued its discussion of these proposals to this meeting so that staff could clarify what types of expenditures could be incurred after an election but that do not affect the outcome of the election. Staff's proposal clarifies this issue by adding the following language to sections 1.104(m) and 1.148(a) to provide specific examples of the types of expenditures covered. Ms. Ng stated that under the proposed language in section 1.104, "qualified campaign expenditure" shall not include filing fees and costs incurred after the election that do not directly affect the outcome of the election, including but not limited to utility bills,

expenses associated with an audit, and expenses related to preparing post-election campaign finance disclosure reports required by law.

Ms. Ng stated that under the proposed language in section 1.148, public funds could be used to pay for filing fees and costs incurred after the election that do not directly affect the outcome of the election, including but not limited to utility bills, expenses associated with an audit, and expenses related to preparing campaign disclosure reports. Candidates may not use public funds to pay post-election bonuses to campaign employees or for election victory celebrations or similar post-election campaign events.

Commissioner Hansen stated that she agreed in part and disagreed with other parts of staff's recommendation, and she suggested that the Commission take more time to review this issue. She stated that it was confusing language and a complicated issue.

Commissioner McCoy stated that the issue was clear to him and questioned why the Commission should take more time to review it.

The Commission engaged in a discussion regarding this issue.

Public Comment:

Kevin Henneghan, Sutton Law Firm, stated that he was happy to see that the Commission accounted for the fact that people have to spend money to comply with CFRO and that this would encourage people to get professional help. He stated that the Commission should extend the exemption to pre-election activities.

Motion 05-12-19-3 (McCov/Anglade): Moved, seconded and passed (4-1, Commissioner Hansen dissenting): that the Commission adopt staff's recommendation.

3. Section 1.200 – Multiple Campaign Accounts

Ms. Ng stated that at the September 19, 2005 meeting, the Commission voted to move section 1.200, which is currently not part of CFRO, into CFRO as part of section 1.108. At the meeting, staff also proposed amending the language of section 1.200 to state the prohibitions in that section more directly. The Commission decided to continue the proposed language changes to this meeting because the Commission had not previously discussed such a change and one Commissioner believed that a more lengthy review of staff's proposed language was necessary to ensure that staff's proposed amendment would not substantively change section 1.200. Staff has reviewed the language and still recommends that the Commission clarify the language in that section to state its prohibitions more directly. Over the years, there has been confusion related to the interpretation of section 1.200. Accordingly, staff believes that clarifying the language will make the law easier to administer and less confusing to the public.

Commissioner Lynn stated that the proposed regulation shifts the burden of proof from the candidate to the Commission, in terms of overcoming the presumption that the monies are used for the normal duties of office.

Commissioner Hansen suggested the following amendments: 1) section b: change to “All funds or services received”; and 2) section b: change to “deposited or credited or otherwise reported”. She inquired as to the definition of “officer of the City.” Mr. Jacobs responded that CFRO uses the term “a City elective officer” and that has a different meaning under local law.

The Commissioners engaged in a brief discussion regarding Commissioner Lynn’s and Commissioner Hansen’s suggestions.

Commissioner Lynn moved that subsection b reads as follows: “All funds, services and in-kind contributions received by a City elective officer, or by any person or committee on behalf of a City elective officer, except monies or services accepted or received from or as a result of the City elective officer’s personal or business activities unrelated to his office, shall be deposited or credited or reported to the officer’s campaign contribution trust account and shall be subject to the contribution limits in Section 1.114 of this Chapter. Nothing in this Section shall prohibit an officer from spending personal funds on official or related business activities.”

Public Comment:

Mr. Marsteller stated that voters did not intend this stretching of the envelope and that Commissioner Lynn’s proposal dramatically goes into new areas and that the Board of Supervisors may have questions about the original voter intent.

Motion 05-12-19-4 (Lynn/Hansen): Moved, seconded and failed to pass (1-4, Commissioners Gusukuma, McCoy, Anglade and Hansen dissenting): that the Commission adopt Commissioner’s Lynn’s proposed language for subsection b.

Commissioner Hansen proposed the following amendment to section b: “All funds, services and in-kind contributions received by a City elective officer, or by any person or committee on behalf of a City elective officer, for expenses incurred directly in connection with carrying out the usual and necessary duties of holding office shall be deposited, credited or otherwise reported to the officer’s campaign contribution trust account and shall be subject to the contribution limits in Section 1.114 of this Chapter. Nothing in this Section shall prohibit an officer from spending personal funds on official or related business activities.”

Executive Director St. Croix suggested that the phrase “or otherwise reported” be placed after “trust account.”

Motion 05-12-19-5 (Hansen/McCoy): Moved, seconded and passed (4-1, Commissioner Lynn dissenting): that the Commission adopt staff’s recommendation, as amended by Commissioner Hansen.

The Commission went into recess at 9:50 p.m. At 9:54 p.m., the Commission reconvened.

4. Sections 1.161.5 and 1.162.5 – Correction of Double Negative

Ms. Ng explained that both of these amendments correct a double negative and make it easier to understand.

Public Comment:

None.

Motion 05-12-19-6 (Anglade/Lynn): Moved, seconded and unanimously passed (5-0): that the Commission adopt staff's recommendation.

5. Section 1.400 et. seq. – False Endorsements Ordinance

Ms. Ng stated that at the last meeting, the Commission discussed moving the False Endorsements Ordinance into CFRO. The Commission also discussed expanding the Ordinance to electronic media and one Commissioner expressed an interest in expanding the Ordinance to apply to all advertisements that refer to clearly identified candidates for City elective office and City ballot measures even if the advertisements do not urge support for or opposition to the candidates or measures. Finally, one Commissioner expressed an interest in applying criminal penalties to violations of the Ordinance. Staff has drafted the language to move the Ordinance into CFRO and expand its scope to electronic media.

Ms. Ng stated that language from section 1.410, which sets forth the prohibition in the False Endorsements Ordinance, is restated at section 1.163.5, with the exception that the phrase “campaign literature” is replaced with the phrase “campaign advertisement.” This change is made to reflect that the false endorsements ban will apply not only to written campaign material but also to other forms of campaign ads such as broadcasts.

Ms. Ng stated that staff does not recommend extending the scope of the prohibition beyond campaign advertisements that urge support for or opposition to one or more candidates or measures. The law as currently drafted sets forth a bright line rule that is both easy for staff to administer and the public to understand. Staff believes that expanding the scope of the Ordinance by deleting the requirement that a campaign ad urge support for or opposition to one or more measures would only cause confusion and make the law more difficult to administer and enforce. In addition, staff does not recommend applying criminal penalties to violations of the law. Staff believes expanding the penalties to include criminal penalties is unnecessary because existing penalties have served as an adequate deterrent and because there is no evidence of a need to expand the scope of the Ordinance to include criminal penalties.

Commissioner Lynn inquired if there were no penalties under this proposal for a violation of this ordinance. Mr. Jacobs responded that that was incorrect, as there are civil penalties, administrative penalties and injunctive relief.

Commissioner Lynn stated that the magic words of advocacy were not captured in the proposed language. Mr. Jacobs responded that the question was whether a mailing urges support for or opposition to one or more candidates or ballot measures, so that it was a factual question. Chairperson Gusukuma stated that Commissioner Lynn's concern was to capture any false endorsement, in whatever form.

The Commission engaged in a brief discussion regarding staff's proposal.

Commissioner Hansen proposed the following amendments: 1) Section 1.100(11): change "contain" to "contains"; 2) Section 1.163.5: change "support of" to "support for"; and 3) Section 1.163.5: replace "urging support for or opposition" to "referring."

Chairperson Gusukuma proposed that Section 1.163.5(c) be amended by adding the word "written" before "notice." Commissioner Hansen accepted this as a friendly amendment.

Mr. Jacobs suggested adding the phrase "clearly identified" before "candidates or ballot measures." Commissioner Hansen accepted this as a friendly amendment.

Public Comment:

None.

Commissioners Anglade and Gusukuma stated that they were concerned about the breadth of the "referring to" language of Commissioner Hansen's proposal.

Mr. Jacobs suggested that that Section 1.163.5(a) be amended to include the word "expressly" before "endorses support."

Commissioner Hansen amended her proposal to Section 1.163.5(a) as follows: "A false endorsement is a statement, signature, photograph, or image representing that a person expressly endorses or conveys support for or opposition to a candidate or measure when in fact the person does not expressly endorse or convey support for or opposition to the candidate or measure as stated in the campaign communication."

Motion 05-12-19-7 (Hansen/Anglade): Moved, seconded and unanimously passed (5-0): that the Commission adopt staff's recommendation, as amended by Commissioner Hansen.

B. Amendment to the Public Financing Program

Section 1.148 Restrictions on Use of Public Funds; Unexpended Public Funds

Public Comment:

None.

Motion 05-12-19-8 (Lynn/McCoy): Moved, seconded and unanimously passed (5-0): that the Commission adopt staff's recommendation.

C. Miscellaneous Amendments

4. Repeal of Section 1.132

Public Comment:

None.



Motion 05-12-19-9 (Hansen/Lynn): Moved, seconded and unanimously passed (5-0): that the Commission adopt staff's recommendation.

Chairperson Gusakuma stated that the rest of the CFRO matters will be continued until the January meeting but then clarified that she wanted to use another process to gauge Commissioner interest in remaining CFRO issues before putting them on the agenda.

- V. Annual Report.** The Ethics Commission Annual Report was distributed at the November, 2005 meeting. Commissioners will discuss the contents of the report, suggest and vote on possible amendments, and adopt the report for submission to the Mayor and Board of Supervisors.

This agenda item was continued to the January meeting.

- VI. Budget discussion.** A proposed Ethics Commission budget for the Fiscal Year beginning on July 1, 2006 is due at the end of February, 2006. Commissioners will hold a preliminary discussion of budget issues and proposals to provide guidance to the staff in preparing the budget submission for FY 2006/07.

This agenda item was continued to the January meeting.

- VII. Response to Fair Political Practices Commission.** A recent advice letter released by the FPPC contends that there are enforcement issues related to provisions of San Francisco law, S.F. Campaign and Governmental Conduct Code sections 1.135, 1.134(c), and 1.161.5(b) governing disclosure requirements and state general purpose committees. The Commission will discuss and possibly approve a response to the FPPC advice letter.

Commissioner Lynn stated that he would like to see the letter signed by the Chairperson.

Commissioner McCoy stated that he thought the Commission had previously decided to ask the FPPC to reconsider its letter and not simply rescind it.

Public Comment:

Anita Mayo, Pillsbury Winthrop stated that the Commission should not send the letter because it was exceeding its authority. She stated that the City's campaign law was preempted by State law.

Motion 05-12-19-10 (Hansen/Lynn): Moved, seconded and unanimously passed (5-0): that the Commission adopt staff's letter, with the Commission's amendments to have the letter signed by the Chair and replace "rescind" with "reconsider."

VIII. Minutes of the Commission meeting of November 14, 2005 and the Commission meeting of December 12, 2005.

This agenda item was continued to the January meeting.

IX. Executive Director's Report.

This agenda item was continued to the January meeting.

X. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.

None.

XI. Adjournment.

Commissioner Anglade pointed out that it was her last meeting and made comments regarding her pleasure in serving on the Commission and how pleased she was to be associated with staff and colleagues in Commission work.

Motion 05-12-19-11 (Anglade/Lynn): Moved, seconded and unanimously passed (5-0): that the Commission adjourn.

The meeting was adjourned at 10:39 p.m.

Respectfully submitted,

Richard Mo
Chief Investigator/Legal Analyst





HOUGHEN
BINDERY LTD
UTICA, OHIO 44089
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